# UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

**No. 78, NOVEMBER TERM, 1892.**

THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND GRANTING ANNUITIES, APPELLANT,

*vs.*

THE JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY AND THE AMERICAN CONSTRUCTION COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

**FILED SEPTEMBER 26, 1892.**

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*a* November Term, 1892.

Nov. 21, 1892.

UNITED STATES OF AMERICA,
*Fifth Judicial Circuit.*

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun and held, pursuant to law, in the court-room of said court, in the city of New Orleans, in said circuit, on the third Monday, being the 21st day, of November, A. D. 1892.

Present and presiding: The Honorable Don A. Pardee, United States circuit judge for the fifth circuit.

Present also: Honorable A. P. McCormick, United States circuit judge for the fifth circuit, and the Honornble James W. Locke, United States district judge for the southern district of Florida.

THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND FOR GRANTING ANNUITIES, Appellant,
*vs.*
THE JACKSONVILLE, TAMPA AND KEY WEST RAILWAY Company and The American Construction Company, Appellees. } No. 78.

Be it remembered that heretofore, to wit, on the 26th day of September, A. D. 1892, a transcript of the record of the above-stated cause was filed in the office of the clerk of said court in the words and figures following, to wit:

1 To the honorable the judges of the circuit court of the United States, northern district of Florida, in equity:

The Pennsylvania Company for Insurances on Lives and for Granting Annuities, a corporation duly organized and existing under the laws of the State of Pennsylvania, and a citizen of said State, exhibits this its bill of complaint against The Jacksonville, Tampa and Key West Railway Company, a corporation organized and existing under the laws of the State of Florida, and a citizen of that State;

And thereupon your orator complains and alleges:

I. That your orator is a corporation duly organized and existing under the laws of the State of Pennsylvania, and a citizen of said State.

II. That the defendant The Jacksonville, Tampa and Key West Railway Company is a corporation organized and existing under the laws of the State of Florida, formed, as your orator is informed and believes, by the consolidation, pursuant to the laws of said State, under a joint agreement filed in the office of the secretary of state of the State of Florida on the ninth day of June, A. D. 1890, of the Atlantic Coast, St. John's and Indian River Railway Com-

pany, a corporation of said State of Florida; the Sanford and Lake Eustis Railroad Company, a corporation of said State of Florida, and the Jacksonville, Tampa and Key West Railway Company, a corporation of said State of Florida.

2 That your orator is informed and believes, and thereupon alleges, that prior to said consolidation, and at the time thereof, the last-mentioned, The Jacksonville, Tampa and Key West Railway Company owned and operated a line of railroad from Jacksonville, in the State of Florida, to Sanford, in Orange county, in said State, with a branch railroad from Enterprise Junction, in Volusia county, to the town of Enterprise, in said county; the Atlantic Coast, St. John's and Indian River Railway Company owned and operated a line of railroad from Enterprise, aforesaid, to the town of Titusville, in Brevard county, in said State, and the Sanford and Lake Eustis Railway Company owned and operated a line of railroad from the town of Sanford, aforesaid, to the town of Tavares, in Lake county, in said State; and that the defendant railway company, at the time of making the mortgage or deed of trust to your orrtor, hereinafter mentioned, owned and operated and now owns and operates all such railroad, and in addition thereto a line of railroad extending from De Land Junction, in the county of Volusia, to De Land, in said county; the whole amounting to about two hundred miles.

III. That on or about the fifteenth day of May, one thousand eight hundred and ninety, the defendant railway company, being a body politic and corporate, owning, possessing and operating the railroad aforesaid, being the railroad and property described in the mortgage hereinafter mentioned, and having and exercising the rights and franchises mentioned in said mortgage, by its officers duly authorized thereto, duly made and executed its four thousand bonds, dated on that day, each for the payment to bearer of one thousand dollars in gold coin, lawful money of the United States, at the agency of said company in the city of Philadelphia, on the fifteenth day of March, one thousand nine hundred and

3 forty-two, and for the payment on presentation and surrender of the annexed coupons, as they should severally become due, of interest on said bonds at the rate of six per cent. per annum, such interest being payable in like coin at said agency on the fifteenth days of March and September in each year until said principal sum should be paid, the said bonds and coupons or interest warrants being in the form shown in the mortgage hereinafter referred to.

IV. That to secure the payment of the principal and interest of the said bonds the said defendant railway company, on or about the fifteenth day of May, one thousand eight hundred and ninety, duly authorized thereto by the directors and by the vote of all the stockholders of the said railway company, made, executed and delivered to your orator as trustee its certain mortgage or deed of trust dated on that day, and thereby conveyed to your orator, its successor or successors and their heirs forever, all and singular the line of railway extending from the city of Jacksonville, in the county of Duval

and State of Florida, through the counties of Duval, Clay, Putnam and Volusia, and through the city of Sanford, in the county of Orange, to the city of Tavares, in the county of Lake and State of Florida, together with the branch extending from De Land Junction to the city of De Land, in the county of Volusia, and also the line of railway extending from Enterprise Junction, in the county of Volusia in said State, through the said county to the city of Titusville, in the county of Brevard in said State.

And also all and singular the lands, tenements and hereditaments, rights of way and easements, and all other interests in land, including lands held or acquired for the purpose of depot stations, terminals or ferries held at the date of said mortgage or thereafter acquired by the said railway company in connection with
4 said railroad or for the uses thereof. And also all leaseholds, leases, terms and parts of terms, rights under leases or contracts, covenants or agreements, and all rights of trackage, terminal, bridge and ferry rights, privileges and franchises, and all licenses, permits and privileges from the Government of the United States or from the State of Florida or by any governmental or municipal authority; and all other rights or privileges, general or special, at the date of said mortgage held or thereafter acquired by the railway company for the purposes of said railroad, or any part thereof. And also all railways, tracks, sidings, spurs, turnouts, bridges, station-houses, depots, freight-houses, warehouses, elevators, round-houses, car-houses, storehouses, turn-tables, water tanks, machine shops, repair shops and other structures, buildings, erections and fixtures of every kind and nature whatsoever, at the date of said mortgage held, or which might thereafter be acquired, by the said railway company for the uses or purposes of said railway, or in connection with or in the business thereof. And also all locomotives, engines, cars and other rolling stock and railway equipment, and all ferry-boats, tug-boats, floats, barges and other floating equipment, and all tools, rails, ties, machinery, implements, fuel and materials at the date of said mortgage held, or which might thereafter be acquired, by the said railway company for the uses or purposes of the said railway, or in connection therewith or the business thereof. And also all other property, real, personal or mixed, at the date of said mortgage held, or which might thereafter be acquired for the purposes of the said railway, or for the use thereof, or in connection therewith, or the business thereof; or for or in connection with the construction, operation or maintenance, reparation or replacement of the said railway, or any part thereof, or as convenient or necessary for the uses or purposes thereof.

And also all rights, privileges and franchises connected
5 with or relating to the said railway and other property, including the right to operate and maintain the said railway and other property whether held at the date of said mortgage or thereafter acquired by the said railway company and connected with or relating to the said railway or for the uses or purposes thereof.

And also all improvements made at the date of said mortgage or

thereafter to be made to any or all of said railway property or estate by the said railway company or by others.

And also all and every other estate, right, title, interest, property or thing, right, privilege or franchise which the said railway company then owned or held or which it might thereafter acquire or hold as necessary or convenient for the use, occupation and enjoyment of the said railway rights, privileges and franchises or any part or portion thereof.

And also all the tolls, rents, issues, profits and income of the said railway and other property.

To have and to hold the premises, property, right, franchises and estate thereby conveyed, or intended to be conveyed, with all and singular the reversions, remainders, tolls, rents, issues and profits, privileges and appurtenances then or thereafter belonging or in anywise appertaining thereto unto your said orator, the said trustee, its successor or successors, and their heirs and assigns forever.

In trust, nevertheless, for the persons and corporations, firms and partnerships, and for the benefits, security and protection of the persons, corporations, firms and copartnerships, who shall hold the bonds and interest warrants aforesaid, or any or either of them, and for the enforcing the payment thereof when payable in accordance with the true intent and meaning of the stipulations of the said mortgage and of said bonds and of said interest coupons, and without preference of any of said bonds over any of the others
6 thereof by reason of priority in the time of the issue or negotiation thereof or otherwise howsoever. Provided, however, and the said mortgage or deed of trust was upon the express condition, that if the railway company, mortgagor, its successor or assigns, should well and truly pay, or cause to be paid, the principal and interest to become due upon the said bonds at the times and in the manner stipulated therein and in said interest coupons, according to the true intent and meaning thereof, and should well and truly keep, perform and observe all and singular the covenants, promises and conditions in said bonds and in the said mortgage or deed of trust expressed as to be kept, performed and observed by or on the part of the said railway company, then the said mortgage and the estate and rights thereby granted should cease, determine and be void, otherwise to be and remain in full force. And a copy of said mortgage or deed of trust is hereto annexed and marked "Exhibit A" and made part of this bill.

And your orator, the said trustee, duly accepted the trust created by said mortgage or deed of trust, uniting in the execution of the same to evidence such acceptance.

V. That said mortgage or deed of trust was forthwith thereafter duly recorded in each of the counties through or into which said railroad ran, or in which was situated any part of said mortgaged property.

VI. That of the said issue of bonds 2,216 bonds, viz., those numbered from 1 to 2216, inclusive, for the principal sum in the aggregate of $2,216,000, were and now are reserved by your orator in its custody and possession for the purpose of exchanging for or paying

or retiring bonds theretofore issued by one or the other of the said three constituent companies by whose consolidation the said defendant railway company was formed.

7 VII. Your orator is informed and believes, and therefore alleges, that the remainder of said four thousand bonds of the defendant railway company secured by the said mortgage or deed of trust, viz., 1,784 bonds, being those numbered from 2217 to 4000, both inclusive, were thereafter duly issued in accordance with the provisions of the said mortgage or deed of trust, and are now outstanding; that a considerable number of the said bonds were sold, and the remainder were delivered by the defendant railway company as collateral security for its promissory notes and other obligations, but how many of the said bonds have been issued and sold, and how many have been issued and delivered for collateral security, your orator is not informed.

VII. Your orator is informed and believes, and on information and belief alleges, that on the 15th day of March, A. D. 1891, there became due and payable upon the said 1,784 bonds issued and outstanding, as aforesaid, a semi-annual instalment of interest evidenced by the interest warrants or coupons attached to said bonds due on the said last-mentioned date, and that but a small part of said interest has been paid, and that since said 15th day of September, A. D. 1891, a large number, viz., five hundred of the said interest warrants or coupons due and payable on that date have been presented at the agency of the said defendant railway company in the city of Philadelphia and payment thereof has been demanded and has been refused.

That on the 15th day of September, A. D. 1891, there became due and payable upon the said 1,784 bonds a semi-annual instalment of interest evidenced by the interest warrants or coupons attached to said bonds due on the said last-mentioned date, and that but a small part of said interest has been paid, and that since said 15th day of

8 September, 1891, many, viz., five hundred, of said interest warrants or coupons due and payable on that date have been presented at the agency of the said defendant railway company in the city of Philadelphia and payment thereof has been demanded and refused.

That on the 15th day of March, A. D. 1892, there became due and payable upon said 1,784 bonds another semi-annual instalment of interest, evidenced by the interest warrants or coupons attached to said bonds, due on said last-mentioned date, and that but a small part of said interest has been paid, and that since said 15th day of March, 1892, a large number, viz., five hundred, of said interest warrants or coupons, due and payable on that date, have been presented at the agency of said railway company in the city of Philadelphia, and payment thereof has been demanded and has been refused.

And your orator shows that said defendant railway company has in these respects made default, and such default continues, and the said defendant railway company has thus failed to pay interest on said bonds according to the stipulations thereof, and of the said in-

terest warrants or coupons, and of the conditions and covenants of the said mortgage or deed of trust, and is in default in respect to said stipulations, conditions and covenants.

VIII. That since the defaults aforesaid the holders of a large number of said bonds, holding also the said coupons or interest warrants due thereon on the 15th day of March, A. D. 1891, and the said coupons due on the 15th day of September, A. D. 1891, and the coupons or interest warrants due thereon on the 15th day of March, 1892, payment of which has been demanded and refused as aforesaid, have, by requisition in writing and signed by them, asked your said orator to proceed forthwith to enforce the rights of the bondholders under said mortgage or deed of trust, by sale or entry or judicial proceedings, as they being advised by counsel learned
9 in the law shall deem most expedient for the interest of the bondholders secured thereby.

Your orator is informed and believes, and on information and belief alleges, that the defendant railway company failed to pay taxes upon its railway and other property which became due November 1st, 1891, and by reason thereof is in default in respect to the conditions and covenants of its said mortgage or deed of trust to your orator.

IX. Your orator is informed and believes, and on information and belief alleges, that the indebtedness of the defendant railway company includes, besides the bonds aforesaid secured by your orator's mortgage and taxes, the following:

1. Bonds of the constituent companies by the consolidation of which the defendant railway company was formed, *i. e.:*

(*a.*) Bonds of the constituent company, the Jacksonville, Tampa and Key West Railway Company, for the principal sum in the aggregate of $1,566,000, secured by a mortgage or deed of trust dated March 1st, 1884, made to the Mercantile Trust Company, as trustee, upon that part of the defendant railway company's railroad extending from Jacksonville to Sanford and from Enterprise Junction to Enterprise.

(*b.*) Bonds of the Atlantic Coast, St. John's and Indian River Railway Company for the principal sum of $360,000, secured by mortgage or deed of trust dated the 1st day of September, 1885, made by said company to the said Mercantile Trust Company, as trustee, upon that part of the defendant railway company's railroad which extends from Enterprise to Titusville.

(*c.*) Bonds of the said Sanford and Lake Eustis Railway Company for the principal sum in the aggregate of $290,000, secured by mortgage or deed of trust dated the first day of September, 1886, made by said company to the said Mercantile Trust Com-
10 pany and covering that part of the defendant railway company's railroad extending from Sanford to Tavares.

Your orator is informed and believes that there has been no default in the payment of interest upon any of the said bonds, and that no condition or covenant in either of the mortgages securing the said bonds has been broken.

2. Bonds of the defendant railway company, known as its col-

lateral trust bonds, for the principal sum in the aggregate of $3,673,000, which are inadequately secured by the pledge or deposit of certain bonds and stock of the Florida Southern Railway Company, but not secured by any lien upon any part of the railroad of the defendant railroad company covered by your orator's mortgage and hereinbefore described.

A semi-annual instalment of interest upon said collateral trust bonds (which bear interest at the rate of four per cent. per annum), amounting to the sum of $73,460, will become due and payable on the first day of August next, which interest the defendant railway company is totally unable to pay and will of necessity refuse and fail to pay.

And your orator is informed and believes, and on information and belief alleges, that, by the terms of the agreement of pledge securing the said collateral trust bonds, the trustee thereunder, by reason of such default, will become entitled to declare the whole principal sum represented by said bonds due and payable, and to foreclose the lien of the said pledge and enter judgment against the said defendant railway company for any deficiency that may remain unpaid upon the said bonds, which deficiency will of necessity be very large, because of the inadequate security for said bonds.

3. Floating indebtedness, so called, represented by promissory notes and otherwise, to the amount of more than $1,800,000, of which between $300,000 and $400,000 is unsecured, and the
11 remainder is secured by the pledge as collateral security of bonds secured by the said mortgage to your orator.

Of this indebtedness a large part is now due and payable, and another large part is due and payable upon demand. The interest upon a large part of said indebtedness is long past due; and the defendant railway company cannot pay either said interest or the said overdue principal.

And your orator alleges that the property covered by the said mortgage to your orator is inadequate security for the bonds issued thereunder, and that the said defendant railway company is insolvent, and that, in order to protect the rights of your orator and the said bondholders and other creditors, and preserve and keep together the property of the defendant railway company, so that its duty to the public as a common carrier may be duly performed, a receiver ought to be forthwith appointed of all the property, rights and franchises covered by your orator's said mortgage.

X. That no proceedings at law have been had nor any action or suit commenced by or in behalf of your orator or any holder of the said bonds of the said company secured by the said mortgage, for any principal or interest now unpaid or accrued thereon, except only this action.

XI. That the property, rights and franchises covered by said mortgage or deed of trust, as aforesaid, are now used and operated as an entirety, and cannot be severed without very material diminution in value, and, if sold, should be sold as an entirety, and cannot reasonably be severed for sale or otherwise without injury to the

bondholders represented by your orator, and to all others interested in said railroad.

In consideration whereof, and forasmuch as your orator is remediless in the premises at and by the strict rules of common law, and is only relievable in a court of equity where matters of
12 this kind are properly recognizable and relievable, your orator therefore prays the aid of this honorable court that the said indenture of mortgage or deed of trust made to your orator as aforesaid may be decreed to be a lien upon all the property, real, personal or mixed, rights, franchises, lands, titles and railroads of the said The Jacksonville, Tampa and Key West Railway Company, defendant, described in said mortgage or deed of trust, that the amount for interest upon said bonds be ascertained, and that the said railway company may be decreed to pay unto your orator for the bondholders secured by the aforesaid mortgage or deed of trust, all arrears of interest now due and payable upon said bonds, together with all costs and expenses in this behalf incurred and expended, and in default thereof that the defendant above named and all persons claiming under it may be forever barred and foreclosed of and from all equity of redemption and claim of, in and to the said mortgaged premises and every part and parcel thereof, and that all and singular the said mortgaged premises, with the appurtenances, property and effects, rights, immunities and franchises in the said mortgage mentioned may be sold as an entirety under the decree of this honorable court, subject, nevertheless, to the said three first mortgages made to the said Mercantile Trust Company; and that the money arising from the sale thereof, after deducting and paying just allowances for all disbursements and expenses of the said sale, including attorneys' and counsel fees and the reasonable charges of your orator for services rendered as trustee and for all expenses incurred by it in the premises and all payments which may be made for taxes or assessments on the said premises, or any part thereof, be applied to the payment of the aforesaid bonds and coupons; and, further, that said Jacksonville, Tampa and Key West Railway Company
13 be ordered and decreed to make, execute and deliver to the purchaser or purchasers at such sale any and all instruments which may be deemed necessary to confirm the title in him or them, and that such purchaser or purchasers be put into possession of the property, rights and franchises sold.

And your orator further prays that a receiver be appointed according to the course and practice of this court, with the usual powers of receivers in like cases, of all the property, equitable interests, things in action, effects, money receipts and estates, rights, privileges, franchises and immunities of the said railway company, and all other property included in and covered by the said mortgage made to your orator; and that said defendant railway company be directed to transfer and deliver possession thereof to said receiver.

And your orator further prays that a writ of injunction be issued out of and under the seal of this honorable court, or be issued by one of your honors, according to the practice of this court in such

case, directing, commanding, enjoining and restraining the said defendant railway company, and all other persons, from interfering with, transferring, selling or disposing of any of the property mentioned in and covered by the said mortgage, or from taking possession of, levying upon or attempting to sell, either by judicial process or otherwise, any portion of the property embraced in or covered by the said mortgage; and that your orator may have such further or other relief in the premises as the nature of the circumstances of this case may require and to this honorable court shall seem meet.

And may it please your honors to grant unto your orator a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said defendant, the said railway company, therein and thereby commanding it, on a day certain therein to be named and under a certain penalty,
to be and appear before this honorable court, then and there
14 to answer, but not under oath (such oath being expressly
waived), all and singular, the premises, and to stand to, perform and abide by such order, direction and decree as may be made against them in the premises as shall seem meet and agreeable to equity and good conscience, and your orator, as in duty bound, will ever pray, &c.

THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND GRANTING ANNUITIES, *Trustee*,
By LINDLEY SMYTH, *Pr.* [SEAL.]

J. G. JOHNSON,
Per J. W. S.,
JOHN W. SIMPSON, *Of Counsel.*
FLETCHER & WURTZ, *Of Counsel.*

J. G. JOHNSON,
Per J. W. S.,
JOHN W. SIMPSON,
*Solicitors for Complainant.*

UNITED STATES OF AMERICA, }
*Eastern District of Pennsylvania, City of Philadelphia,* } *ss:*

Lindley Smyth, being duly affirmed, says that he is of full age; that he resides in Philadelphia, in the State of Pennsylvania; that he is, and for some time last past has been, the president of The
Pennsylvania Company for Insurances on Lives and for
15 Granting Annuities, the complainant in the foregoing bill
of complaint; that he has read the foregoing bill and knows the contents thereof, and that he knows that the allegations of the said bill are true, except those which are made upon information and belief, and those he believes to be true; that his information in regard thereto has been derived from the officers of the complainant and its counsel, and from the officers of the defendant railway com-

pany and the holders of bonds secured by the mortgage or deed of trust to the complainant and described in the said bill of complaint.

LINDLEY SMYTH.

Subscribed and affirmed to before me this 21st day of July, A. D. 1892.

[SEAL.] CHAS. H. WHITE,
*Notary Public.*

16 EXHIBIT A.

(Certified copy.)

Jacksonville, Tampa and Key West Railway Company.

*Consolidated Mortgage, May 15th,* 1890.

Indenture, made this fifteenth day of May, one thousand eight hundred and ninety, by and between the Jacksonville, Tampa and Key West Railway Company, a corporation duly organized and existing under the laws of the State of Florida, herein called the railway company, party of the first part, and the Pennsylvania Company for Insurance on Lives and Granting Annuities, a corporation duly organized and existing under the laws of the State of Pennsylvania, herein called the trustee, party of the second part:

Whereas, the railway company is a corporation formed pursuant to the laws of the State of Florida, by the consolidation of the Jacksonville, Tampa and Key West Railway Company, the Atlantic Coast, Saint John's and Indian River Railway Company, and *and* the Stanford and Lake Eustis Railroad Company, under a joint agreement by and between them, which was filed in the office of the secretary of state for the State of Florida, on the ninth day of June, A. D. 1890; and

Whereas, by force of such consolidation the railway company has become vested with the title to all the rights, privileges, franchises and property, and has assumed and become bound by all the covenants, obligations and promises of each of the constituent companies as aforesaid; and

Whereas, the Jacksonville, Tampa and Key West Railway Company, one of the parties to said consolidation, has issued, and
17 there are now outstanding, its bonds for the principal sum in the aggregate of one million five hundred and sixty-six thousand dollars, each of said bonds being for one thousand dollars, dated the first day of March, A. D. 1884, and all being secured by a mortgage or deed of trust, dated March 1, 1884, made by the said The Jacksonville, Tampa and Key West Railway Company to the Mercantile Trust Company; and the said Atlantic Coast, Saint John's and Indian River Railway Company has issued, and there are now outstanding, its bonds for the principal sum in the aggregate of three hundred and sixty thousand dollars, each of said

bonds being for one thousand dollars, dated the first day of September, 1885, and all being secured by a mortgage or deed of trust, dated the first day of September, 1885, and made by the said Atlantic Coast, Saint John's and Indian River Railway Company to the said The Mercantile Trust Company; and the said Sanford and Lake Eustis Railroad Company has issued, and there are now outstanding, its bonds for the principal sum in the aggregate of two hundred and ninety thousand dollars, each of said bonds being for one thousand dollars, dated the first day of September, 1886, and all being secured by a mortgage or deed of trust dated the first day of September, 1886, and made by the said Sanford and Lake Eustis Railroad Company to the Mercantile Trust Company; and

Whereas, the railway company, for the purpose of retiring or paying the said bonds and other indebtedness of its said constituent companies, and also for the purpose of completing, constructing, extending, furnishing, acquiring, improving and providing betterments for and additions to its railroad and other property, and operating the same, and for its other lawful purposes, is about to borrow money and to issue its bonds therefor, and to execute a mortgage or deed of trust upon its railroad, property and franchises, as security for the payment of such bonds; and

18 Whereas, the board of directors of the railway company has authorized and agreed upon as necessary and expedient the borrowing by the railway company of such sums of money as may be required for the purposes aforesaid, and the issue by the railway company therefor of its bonds, to the amount of four million dollars, payable in gold coin of the United States, of the present standard, on the fifteenth day of March, A. D. 1940, and bearing interest at the rate of six per cent. per annum, payable semi-annually, in like coin, on the fifteenth days of March and September of each year until the principal sum shall be paid, each bond to be for one thousand dollars, to be sealed with the corporate seal of the railroad company, attested by its secretary and to be signed with the corporate name of the railway company, by its president, and each bond to have interest coupons annexed with the signature of its treasurer engraved thereon, and to be duly certified by the trustee of this mortgage, the execution of which, for the purpose of securing equally all of said bonds and coupons, has in like manner been agreed upon and authorized, the bonds, coupons and certificates to be substantially in the forms following, to wit:

19 (Form of bond.)

UNITED STATES OF AMERICA, *State of Florida.*

No. —. $1,000.

*Jacksonville, Tampa and Key West Railway Company Consolidated Mortgage.*

Six per cent. fifty-year gold bond.

Limit of issue, $4,000,000.

For value received, The Jacksonville, Tampa and Key West Railway Company promises to pay to the bearer, or registered holder hereof, at the agency of said railway company, in the city of Philadelphia, on the fifteenth day of March, one thousand nine hundred and forty, one thousand dollars in gold coin of the United States, of the present standard, and to pay interest thereon in like coin, at the rate of six per cent. per annum, upon presentation and surrender, at said agency, of the annexed coupons, as they severally become due, on the fifteenth days of March and September, in each year until said principal sum shall be paid.

This bond is one of a series of bonds of like tenor and amount, numbered consecutively from 1 to 4000, all of which are equally secured to be paid by the mortgage or deed of trust made by said railway company, dated May fifteenth, A. D. 1890, conveying to the Pennsylvania Company for Insurances on Lives and Granting Annuities all the franchises, railways, equipment and other property of said railway company described in said mortgage, to the provisions of which this bond is subject.

20 Upon default in the payment of any interest on any of said bonds, the principal of all said bonds may be declared due, as provided in said mortgage.

This bond may be registered on said railway company's books, at its said agency, and registration noted hereon, after which no valid transfer hereof can be made, except on said books, until after registered transfer to bearer.

The annexed coupons will always be transferable by delivery.

This bond is issued upon the express condition, to which each successive holder hereof consents by receiving the same, that no stockholder of the railway company shall be held personally liable to pay any part of the principal or interest hereof, by virtue of any law now in force or hereafter enacted, such liability of stockholders being waived.

This bond will not become valid until the certificate endorsed hereon has been signed by the trustee of said mortgage.

In witness whereof, said railway company has caused its corporate seal to be hereto affixed and attested by its secretary, and this bond to be signed by its president, and has hereto affixed coupons, with

the signature of its treasurer printed thereon, this 15th day of May, A. D. one thousand eight hundred and ninety.

JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY,

[SEAL.] By —— ——, *President.*

Attest: —— ——, *Secretary.*

21 (Form of coupon.)

On the 15th day of ——, —, The Jacksonville, Tampa and Key West Railway Company will pay the bearer thirty dollars in gold coin, at its agency in the city of Philadelphia, being six months' interest then due on its consolidated mortgage bond, No. —.

—— ——, *Treasurer.*

(Form of trustee's certificate.)

This bond is hereby certified to be one of the series of bonds described in the mortgage or deed of trust in this bond referred to.

THE PENNSYLVANIA COMPANY FOR INSURANCE ON LIVES AND GRANTING ANNUITIES, *Trustee,*

By —— ——, *President.*

And whereas, the borrowing of said sums and the issue of bonds therefor, and the execution and delivery of this mortgage or deed of trust as security for the payment of said bonds, principal and interest, has been duly authorized and agreed upon by all the stockholdkrs of the railway company:

Now, therefore, this indenture witnesseth, That the railway company, party of the first part, for and in consideration of the premises, and the sum of one dollar to it duly paid by the trustee, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest of the bonds aforesaid, at any time outstanding, hath granted, bargained, sold, aliened, remised, released, conveyed and confirmed, assigned,
22 transferred and set over, and by these presents doth grant, bargain, sell, alien, remise, release, convey and confirm, assign, transfer and set over unto the said party hereto of the second part, and its successors and assigns and their heirs forever, all and singular the line of railway extending from the city of Jacksonville, in the county of Duval and State of Florida, through the counties of Duval, Clay, Putnam and Volusia, and through the city of Sanford in the county of Orange, to the [city] of Tavares in the county of Lake and State of Florida; together with the branch extending from De Land Junction to the city of De Land in the county of Volusia; and also the line of railway extending from Enterprise Junction in the county of Volusia and State of Florida, through the county of Volusia, to the city of Titusville in the county of Brevard and State of Florida.

And also all and singular the lands, tenements and hereditaments, rights of way and easements, and all other interests in land, including lands held or acquired for the purposes of depots, stations, terminals or ferries, now held or hereafter acquired by the railway company, in connection with said railroad or for the uses thereof.

And also all leaseholds, leases, terms and parts of terms, rights under leases or contracts, covenants or agreements, and all rights of trackage, terminal, bridge and ferry rights, privileges and franchises, and all licenses, permits and privileges from the Government of the United States, or from the State of Florida, or by any governmental or municipal authority, and all other rights or privileges, general or special, now held or hereafter acquired by the railway company for the purposes of said railroad, or any part thereof.

And also all railways, tracks, sidings, spurs, turnouts, bridges, station-houses, depots, freight-house, warehouses, elevators,
23. round-houses, car-houses, storehouses, turn-tables, water tanks, machine shops and repair shops, and other structures, buildings, erections and fixtures of every kind and nature whatsoever, now held or which may hereafter be acquired by the railway company for the uses and purposes of the said railway, or in connection therewith or in the business thereof.

And also all locomotives, engines, cars and other rolling stock and railway equipment, and all ferry-boats, steamboats, tug-boats, floats, barges and other floating equipment, and all tools, rails, ties, machinery, implements, fuel and materials now held or which may hereafter be acquired for the use or purposes of the said railway, or in connection therewith or the business thereof.

And also all other property, real, personal or mixed, now held or which may hereafter be acquired for the purposes of the said railway, or for the use thereof or in connection therewith or the business thereof, or for or in connection with the construction, operation or maintenance, reparation or replacement of the said railway, or any part thereof, or as convenient or necessary for the uses or purposes thereof.

And also all rights, privileges and franchises connected with or relating to the said railway and other property, including the right to operate and maintain the said railway and other property, whether how held or hereafter acquired by the railway company, and connected with or relating to the said railway or for the uses or purposes thereof.

And also all improvements made or to be made to any or all of said railway, property or estate by the said party of the first part or by others; and also all and every other estate, right, title, interest, property or thing, right, privilege or franchise which the said party of the first part now owns or holds, or which it may hereafter acquire or hold as necessary or convenient for the use, occupation and enjoyment of said railway, rights, privileges and fran-
24 chises, or any part or portion thereof.

And also all the tolls, rents, issues, profits and income of said railway and other property:

To have and to hold the premises, property, rights, franchises and estates hereby conveyed, or intended to be conveyed, with all and singular the reversions, remainder, tolls, rents, issues and profits, privileges and appurtenances, now or hereafter belonging, or in anywise appertaining, thereto, unto the said party of the second part, and its successors and assigns and their heirs, forever, in trust, nevertheless, for the persons and corporations, firms and partnerships, and for the benefit, security and protection of the persons and corporations, firms and partnerships, who shall hold the bonds and interest coupons aforesaid, or any or either of them, and for the enforcing the payment thereof, when payable, in accordance with the true intent and meaning of the stipulations of this deed and of said bonds and of said interest coupons, and without preference of any of said bonds over any of the others thereof by reason of priority in the time of the issue on negotiation thereof or otherwise howsoever. Provided, however, and these presents are upon the express condition, that if the railway company, its successors or assigns, shall well and truly pay, or cause to be paid, the principal and interest to become due on the said bonds, to be issued as aforesaid, at the times and in the manner stipulated in said bonds and in said interest coupons, according to the true intent and meaning thereof, and shall well and truly keep, perform and observe all and singular the covenants, promises and conditions in said bonds and in this indenture expressed as to be kept, performed and observed by or on the part of the railway company, then these presents and the estate and rights hereby granted shall cease, determine and be void; otherwise to be and remain in full force. And provided, further, that these presents shall not be held to convey nor construed to constitute a lien upon the lands, or any part thereof, heretofore granted or which may hereafter be granted to the railway company or to any of said constituent companies, parties to said consolidation, by or under any act of the legislature of the State of Florida, except such part of said lands as now is or may hereafter be actually used by the railway company for right of way or for stations or depots, or otherwise in its business as a common carrier.

It is hereby covenanted and agreed by and between the parties hereto, and the railway company, for itself, its successors and assigns, doth hereby covenant, promise and agree to and with the respective persons and corporations, firms and partnerships who shall hold the bonds and interest coupons aforesaid, or any or either of them, that the further trusts, uses, purposes, conditions and covenants for and upon which the rights, franchises and property, real, personal and mixed, hereinbefore described or enumerated, are conveyed to and are to be held and disposed of by the trustee are as follows, that is to say:

First. The personal property and chattels hereby conveyed or intended to be, shall be real estate for all the purposes of this instrument, and shall be held and taken to be fixtures and appurtenances of the railway hereby conveyed, and as a part thereof, and are to be

used and sold therewith and not separated therefrom, except as hereinafter provided.

Second. Of the said issue of bonds hereby secured or intended to be, two thousand two hundred and sixteen bonds, viz.: those numbered from 1 to 2216 inclusive, for the principal sum in the aggregate of two million two hundred and sixteen thousand dollars, shall be reserved by the trustee in its custody and possession, and withheld from issue, except for the purpose of exchanging
26 for or paying or retiring the bonds hereinbefore referred to as having been issued by one or the other of the said three constituent companies, and secured to be paid by the mortgage or deed of trust of such constituent company to the said The Mercantile Trust Company, and for the purpose of such exchange, or for the purpose of retiring or paying the bonds of any of said constituent companies, the bonds of the railway company so reserved shall be certified, issued and delivered at the rate of one such bond for each constituent bond paid or retired or received in exchange therefor; that is to say, whenever any of the said bonds of any of the said constituent companies shall be received by the trustee, or the same shall have been paid or retired, the trustee shall certify and deliver to the railway company or its order an equal number of the bonds of the railway company hereby secured and reserved as aforesaid, and the bonds of the constituent company received in exchange therefor or so paid or retired, together with the coupons attached to each such bond, shall forthwith be canceled, and thereafter be held by the said trustee to be delivered to the Mercantile Trust Company, trustee of the several mortgages made by the constituent companies herein mentioned, upon request of the board of directors of said railway company. The trustee shall certify and deliver the remainder of the bonds secured by this mortgage, or intended to be, viz.: those numbered from 2217 to 4000, both inclusive, on the order of the president or vice-president or board of directors of the railway company.

Third. The railway company shall pay the principal of all bonds duly issued hereunder, according to the terms thereof, when the principal shall become or be declared due and payable, upon the surrender of the bonds, and shall pay the interest thereon, according to the terms of the bonds, until the principal is paid,
27 without deductions from principal and interest for any taxes, assessments or governmental or other charges imposed on the mortgaged property or franchises. As the coupons annexed to said bonds are paid they shall be canceled, and no purchase of any coupons nor any advance or loan thereon, nor redemption thereof, by or on behalf of the railway company, after the same shall have been detached from the bonds to which they belong, shall keep such coupons alive or preserve their lien upon the mortgaged property.

Fourth. The railway company shall pay all taxes, assessments and governmental or other charges lawfully imposed on any of said railways or other property or on the mortgaged franchises or any of them, when the same shall become due, and shall not suffer any lien superior to the lien of this mortgage, except the mortgages of the

constituent companies aforesaid, to attach to any part of the mortgaged property or franchises, and shall not commit nor suffer any waste thereof. Should the railway company fail to pay any such tax, assessment or other charge, or suffer any lien to attach, the trustee may pay and discharge the same, and shall have a lien therefor upon all the property and franchises hereby conveyed or intended so to be; and the railway company shall be bound to repay, on demand, all moneys paid by the trustee to satisfy or discharge any tax, assessment or other lien or charge, with interest thereon.

Fifth. So long as there shall be no default in the payment of principal or interest of any of the bonds secured by this mortgage, or in respect to any of the covenants or agreements of the railway company herein expressed, the railway company shall possess, operate, manage and use the mortgaged railway and other property and franchises, and receive the tolls, rents, income and profits
28 thereof as if this mortgage had not been made, and shall also have the right to sell or otherwise dispose of, free from any lien created hereby, any equipment, furniture, machinery, tools, or implements which shall become old, worn out, or unfit for use, or which shall not be required in the operation of said railway or the management of said property, and shall apply the proceeds of any sale thereof to the replacement of the property sold or otherwise disposed of, for the benefit of the mortgaged property, and shall also have the right, with the consent in writing of the trustee, to sell or otherwise dispose of, with like effect, any other of the property covered by this mortgage which shall no longer be either useful or necessary in the proper and judicious management or maintenance of the railway and other property hereby conveyed or the business thereof.

And the trustee is expressly authorized to assent to the release under seal from the operation and effect of this deed of any such property so sold or disposed of, viz.: any property acquired as grounds for depot stations or other buildings, and which shall have ceased at the time of such release to be required for the same or for any other purpose of the railway company; any premises provided as right of way, which, at the time of such release, by reason of any change in the railway company's route, shall have ceased to be required for right of way or for any other purpose of the railway company; and any other real estate belonging to the railway company not forming part of the line of its railroad, and at the time of such release not used or required for the maintenance, operation or other purposes of the said railroad, and shall be in good faith sold or exchanged by the railway company. Any property substituted for or acquired with the proceeds of any sale of property covered by this mortgage shall immediately become and be subject to the lien hereof, as if the same had been originally conveyed hereby, and shall upon the written request of the trustee
29 be conveyed by the railway company to the trustee to be held upon the trusts hereby created. And the proceeds of property so sold or otherwise disposed of, if cash, shall be expended

in the purchase of other property required by the railway company, which shall immediately become and be subject to the lien hereof or otherwise for the benefit of the mortgaged property, or in lieu thereof shall be paid over by the railway company to the trustee, to be applied by it in its discretion to the purchase in open market of one or more of the bonds hereby secured; and all bonds so purchased shall be immediately canceled and shall cease to be entitled to the benefit of the security hereby provided.

Sixth. In case of default continuing for six months after due demand in the payment of any interest on any of the bonds secured hereby, the principal of all of said bonds hereby secured and all interest accrued and unpaid thereon shall become immediately due and payable, either at the election and upon the declaration of the trustee, or at the election and upon the declaration of the holders of a majority of the bonds hereby secured and then outstanding made as hereinafter provided and filed with the trustee; and the owners of a majority of said bonds may, by a written request, made as hereinafter provided, and filed with the trustee, instruct said trustee to refrain from electing or declaring the principal of said bonds to be due and payable, and may reverse any election or declaration of the trustee making the principal of said bonds immediately due and payable. And the principal of all the bonds hereby secured shall become due and payable upon a foreclosure sale of the mortgaged property, even though the same shall not have previously become or been declared to be due and payable.

Seventh. In case of default for six months after demand in the payment of any money, principal or interest hereby secured, the railway company, upon demand of the trustee, shall forthwith surrender to the trustee the actual possession of, and it shall be lawful for the said trustee forthwith to enter into and upon, and take possession of, personally or by its agents or attorneys, all and singular the railways, property and equipment thereof, and the appurtenances thereto, and all the mortgaged premises hereby conveyed or intended to be, together with all the records, books, papers and accounts of the railway company, and to have, hold and use, operate and manage the same, and from time to time make all needful repairs and such alterations therein and additions and improvements thereto as to it shall seem wise, and as the net income coming to its hands shall be adequate to pay for; and to receive the tolls, rents, incomes, issues and profits thereof, and out of the said rents, tolls, incomes, issues and profits to pay all the proper costs, charges and expenses of so taking, holding and managing the same, including a reasonable compensation to said trustee, its agents, attorneys and counsel, and all taxes and assessments prior to the lien of these presents, and all expenses of such repairs, alterations, additions and improvements, and to apply the remainder of the moneys so received by it as follows: In case the principal moneys secured by such bonds shall not have become due, to the payment of the coupons remaining in default in the order of their maturity; in case the said principal moneys shall have become due, to the payment of the overdue coupons in the order of their maturity, and

then to the payment of the principal upon such bonds *pro rata*, without any preference or priority whatever.

Eighth. In case of default for six months after due demand
31 in the payment of any money, principal or interest, hereby secured, it shall be lawful for the trustee, with or without entry, to sell all the railways, premises, estate, property, rights and franchises hereby conveyed, at public auction, at some suitable and usual place in the city of Jacksonville, Florida, having first given such notice of such sale as is required by law, and also notice by publication in at least two newspapers, one published in the city of Philadelphia, Pennsylvania, and one published in the city of Jacksonville, Florida, at least twice a week for three months next preceding such sale; and from time to time to adjourn such sale or sales in its discretion, and upon such sale or sales to make and deliver to the purchaser or purchasers of the premises, estate, property, rights and franchises so sold a good and sufficient deed or deeds for the same, which sale or sales shall be a perpetual bar, both in law and in equity, against the railway company and all persons and corporations lawfully claiming or to claim, by, through or under it; and upon the making of any such sale the principal of all the bonds which may have been issued and shall then be outstanding hereunder shall forthwith become due and payable, anything in said bonds to the contrary notwithstanding; and upon the making of any such sale the trustee shall apply the proceeds of such sale or sales as follows, to wit: First, to the payment of the costs and expenses of such sale or sales, including a reasonable compensation to the trustee, its agents, attorneys and counsel, and all expenses, liabilities and advances made and incurred by said trustee in the administration of the trusts hereby created, and in operating and maintaining the railways hereby conveyed or intended to be, and all taxes and assessments prior to the lien of these presents; second, to the payment of the whole amount of principal and interest which shall then be owing or unpaid upon the said bonds, or any of them,
whether the said principal by the tenor of said bonds be then
32 due or yet to become due; and, in case of a deficiency of such proceeds to the payment of the overdue coupons in the order of their maturity, then to the payment of the principal upon such bonds *pro rata*, without any preference or priority whatever; third, to the payment of the surplus, if any, to whomsoever may be declared lawfully entitled to receive the same by the judgment of some court of competent jurisdiction.

The receipt of the trustee who shall make the sale hereinbefore authorized shall be a sufficient discharge to purchaser or purchasers at such sale for his or their purchase-money, and such purchaser or purchasers, his or their heirs or assigns or personal representatives, shall not, after paying such purchase-money and receiving such receipt of the trustee, be obliged to see to the application of such purchase-money upon or for the trusts or purposes of these presents, or be in anywise answerable for any loss, misapplication or non-application of such purchase-money by the trustee.

The foregoing provisions for enforcing the security intended to

be given by this mortgage are cumulative to the ordinary remedy by foreclosure in the courts.

Ninth. In case of default in the payment of either principal or interest of any of the bonds secured hereby, the trustee may at any time, after due demand of payment, such default continuing, begin foreclosure or any other appropriate proceeding, in any proper court, by way of remedy, or enforce the powers of entry and sale hereby granted, or either, as the trustee, being advised by counsel, shall deem most expedient for the interest of the owners of said bonds, and upon the request of the owners of a majority of the bonds secured hereby, made as hereinafter provided, and filed with the trustee, and upon reasonable indemnity, the trustee shall proceed to enforce the remedy by foreclosure or other appropriate proceeding in some proper court, or to enforce the powers of entry and
33 sale hereby granted, as directed by the bondholders making such request; or, in the absence of such directions as the trustee, being advised by counsel, may deem most expedient in the interest of the bondholders. And it is hereby agreed that the right to take proceedings for the foreclosure of this mortgage, or otherwise to enforce the security intended to be given hereby, is vested exclusively in the trustee, until the trustee shall have refused to proceed upon the request of the holders of a majority of the bonds, accompanied by the tender of reasonable indemnity.

Tenth. In case of any proceeding to foreclose this mortgage, the railway company shall not set up or claim the benefit of any appraisement, valuation, stay, extension or redemption laws now in force or which may hereafter be enacted in the State of Florida, but hereby irrevocably waives the benefit of all such laws, and also hereby irrevocably waives all right to have the mortgaged property and franchises marshaled upon any foreclosure sale thereof, and consents that the same be sold as a whole.

Eleventh. Upon the beginning of any suit to foreclose this mortgage, or other proceedings to enforce the security hereby intended to be given, the trustee shall be entitled to the appointment, by a court of competent jurisdiction, of a receiver or receivers of the mortgaged property and of the earnings, incomes, rents, issues and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

Twelfth. In case of a foreclosure sale of the property and franchises hereby mortgaged, any purchaser shall have the right to apply, in making payment therefor, any bonds and coupons secured hereby, and entitled to share in the net proceeds of such sale, counting each bond and coupon at such sum as shall be payable thereon out of such net proceeds.

34 Thirteenth. Any declaration, request, election or appointment herein provided to be made by the holders of the bonds hereby secured, shall be by an instrument or instruments in writing, and must be signed by the bondholder or his duly authorized attorney, and the execution thereof shall be deemed sufficiently proved if a notary public or other officer authorized to take the acknowledgment of deeds shall certify that each party signing the same ac-

knowledged the execution thereof, and made oath before him to the ownership of the said bonds. The execution of each power of attorney under which any person shall claim to act for another in signing any such instrument must be acknowledged before a notary public or other officer authorized to take the acknowledgment of deeds, and must be filed with the instrument so signed. The trustee may, nevertheless, require any person claiming to be a bondholder to produce his bonds or to give other evidence satisfactory to the trustee of his ownership.

Fourteenth. Each of the bonds hereby secured is issued upon the express condition, to which each successive holder thereof expressly assents by receiving the same, that no stockholder of the railway company shall be held personally liable to pay any part of the principal or interest of said bond, by virtue of any law now in force or hereafter enacted, and each holder of any such bonds, by receiving the same, expressly waives any right he may now or hereafter have to proceed against the stockholders of the railway company for the payment of said bonds, or any part thereof, and agrees to have recourse for such payment only against the railway company and the property thereof.

Fifteenth. The railway company and the trustee shall, upon reasonable request, execute and deliver such further instruments and do such further acts as may be necessary or proper to carry out more effectually the purposes of this mortgage, or to transfer to any new trustee the estate, powers, instruments and funds held in trust hereunder.

Sixteenth. Upon the payment of the principal and interest of all the bonds secured hereby, according to their terms and the reasonable compensation and lawful charges of the trustee, the trustee shall, on demand, execute and deliver any instrument which may be necessary or proper to satisfy the lien hereof, and reconvey to the railway company the estate and title hereby conveyed or intended to be, and to discharge this mortgage from the record.

Seventeenth. The trustee may resign the trusts hereby created by notice in writing to the railway company, given at least three months before the resignation is to take effect, unless shorter notice be accepted by the railway company. Whenever a vacancy occurs in the office of trustee, either the railway company or the owners of a majority of the bonds secured hereby may appoint a new trustee, by filing the appointment in the office of the secretary of state of the State of Florida. Any such appointment by the railway company shall be under its corporate seal, attested by its secretary, and shall be signed by its president and duly acknowledged. Notice thereof shall immediately thereafter be advertised by the railway company at least once a week for four successive weeks in two newspapers of general circulation, one published in the city of Philadelphia in the State of Pennsylvania, and one in the city of Jacksonville in the State of Florida, and, until sixty days after the first advertisement of such notice, the owners of the majority of the bonds secured hereby may, by filing an appointment as aforesaid, replace by another trustee the new trustee appointed by the railway com-

pany. If a vacancy in the office of trustee shall remain un-
36 filled for thirty days, any owner of a bond secured hereby may, on not less than ten days' notice to the railway company, apply to the circuit court of the United States for the district including the city of Jacksonville, for the appointment of a new trustee. Every new trustee, however appointed, must be a trust company of the city of Philadelphia. Every new trustee shall, immediately after appointment, and by virtue thereof, be vested with all the estate and have all the rights, powers and discretion conferred by this instrument on the trustee named herein.

The trustee shall not be liable for any error or mistake made by it in good faith, only for gross negligence or willful default in the discharge of its duties as trustee.

Eighteenth. The word "trustee," as used herein, shall be construed to mean the trustee for the time being.

Nineteenth. The provisions of this instrument shall bind and benefit the successors and assigns of the railway company and successors of the trustee in the trust hereby created.

In witness whereof, each of the parties hereto has caused its corporate seal to be hereto affixed, attested by its secretary, and this instrument to be signed by its president, the day and year first herein written.

JACKSONVILLE, TAMPA AND
KEY WEST R'Y CO.,
By ROB'T H. COLEMAN, *President.*

Attest: CHARLES C. DEMING,
[SEAL.] *Secretary.*

Signed and sealed in the presence of—
HARRY E. SLEAU.
CHAS. EDGAR MILLS.

37 STATE OF NEW YORK, } ss:
*City and County of New York,* }

Be it remembered that on this 18th day of June, A. D. 1890, before me, Chas. Edgar Mills, a commissioner of the State of Florida in and for the State of New York, residing in said city of New York, personally appeared Robert H. Coleman, the president of the Jacksonville, Tampa and Key West Railway Company; Charles C. Deming, the secretary of the same company, to me respectively personally known, and known to me to be such, who, being by me severally duly sworn, did depose and say that he, said Robert H. Coleman, resided in Cornwall, State of Pennsylvania, and he, said Charles C. Deming, resided in New York city, New York; that he, said Robert H. Coleman, was the president, and he, said Charles C. Deming, was the secretary, of the said company; that they know the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the board of directors of said company, and that

they, the said Robert H. Coleman and Charles C. Deming, signed their names thereto by the like order as such president and secretary for said company respectively.

And the said Robert H. Coleman and Charles C. Deming, as such president and secretary above mentioned, further acknowledged to me that they had executed the said instrument to be their free and voluntary act and deed, and to be the free and voluntary act and deed of said company, for the uses and purposes therein expressed.

Given under my hand and official seal this 18th day of June, A. D. 1890.

[SEAL.] CHAS. EDGAR MILLS,
*Commissioner for State of Florida in New York.*

38 The Pennsylvania Company for Insurances on Lives and Granting Annuities, of the city of Philadelphia hereby accepts the foregoing trust.

In witness whereof, the said company has caused its corporate seal to be hereto affixed, duly attested this twenty-first day of June, A. D. 1890.

LINDLEY SMYTH, *Pt.*

Attest: WM. P. HENRY,
[SEAL.] *Secretary.*

Sealed and delivered in the presence of—
JARVIS MASON,
ROBERT HAYDOCK.

STATE OF FLORIDA,
*Office Secretary of State,* } ss:

I, John L. Crawford, secretary of State, do hereby certify that the foregoing is a correct transcript of the original now on file in this office.

Given under my hand and the great seal of the State
[SEAL.] of Florida at Tallahassee, the capital, this 30th day of June, A. D. 1890.

JOHN L. CRAWFORD,
*Secretary of State.*

[Endorsed:] Circuit court of the United States, northern district of Florida. The Pennsylvania Company for Insurances on Lives and for Granting Annuities, complainants, against The Jacksonville, Tampa & Key West Railway Company, defendant. File of date, July 23d, 1892. Don A. Pardee. Filed July 23, 1892. Philip Walter, clerk.

39 In the Circuit Court of the United States for the Northern District of Florida.

THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND FOR GRANTING ANNUITIES, Complainant,
*against*
THE JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY, Defendant.
} In Equity.

UNITED STATES OF AMERICA,
*Southern District of New York, City, County and State of New York,* } ss:

Charles C. Deming, being duly sworn, on his oath deposes and says:

I am of lawful age, and am secretary and a director of the defendant railway company. I have been connected with the said railway company and its predecessor, the Jacksonville, Tampa and Key West Railway Company, as director, secretary or treasurer, during the nine years last past, and have been and am familiar with its conditions and affairs.

The indebtedness of said railway company, besides the bonds secured by the mortgage to the complainant correctly described in the bill of complaint, and taxes, amounting to $25,000, includes the following:

I. Bonds of the constituent companies by the consolidation of which the defendant railway company was formed, viz:

40 (*a*) Bonds of the constituent company, the Jacksonville, Tampa and Key West Railway Company, for the principal sum in the aggregate of $1,566,000, secured by a mortgage or deed of trust, dated March 1st, 1884, made to the Mercantile Trust Company, as trustee, upon that part of the defendant railway company's railroad extending from Jacksonville to Sanford and from Enterprise Junction to Enterprise, in the State of Florida.

(*b*) Bonds of the Atlantic Coast, St. John's and Indian River Railway Company, for the principal sum of $360,000, secured by a mortgage, dated the 1st day of September, 1885, made by said company to the said Mercantile Trust Company, as trustee, upon that part of the defendant railway company's railroad which extended from Enterprise to Titusville, in the State of Florida.

(*c*) Bonds of the Sanford and Lake Eustis Railway Company, for the principal sum, in the aggregate, of $290,000, secured by a mortgage or deed of trust, dated the first day of September, 1886, made by said company to the Mercantile Trust Company upon that part of the defendant railway company's railroad extending from Sanford to Tavares.

II. Bonds of the defendant railway company, known as its collateral trust bonds, for the principal sum, in the aggregate, of $3,673,000, which are secured by the pledge or deposit of certain bonds and stock of the Florida Southern Railway Company, but which are not secured by any lien upon any part of the railroad of the defendant railway company covered by the mortgage to the

complaint herein, which mortgage is described in the bill of complaint.

I believe that the security for the said collateral trust bonds, if disposed of at forced sale, would produce very much less than the amount due upon said bonds. The semi-annual installment
41 of interest upon such collateral trust bonds, amounting to the sum of $73,460, will become due and payable on the first day of August next. This interest the defendant railway company is unable to pay, and will of necessity refuse and fail to pay the same.

By the terms of the agreement or pledge securing the said collateral trust bonds, the trustee therein, by reason of such default will soon become entitled to declare the whole principal sum represented by said bonds due and payable, and to foreclose the said pledge and seek judgment against the said defendant railway company for any deficiency that may remain unpaid upon said bonds. For the reason I have already stated, this deficiency will in all probability be very large.

III. The floating indebtedness, so called, represented by promissory notes and otherwise, exceeding $1,800,000, of which sum between $300,000 and $400,000 is unsecured and the remainder is secured by the pledge as collateral security of bonds secured by the said mortgage to the complainant herein and otherwise.

Of this indebtedness a large part is now due and payable and another large part is due and payable on demand. The interest upon a large part of said indebtedness is long past overdue, and the defendant railway company is not now in funds to pay either said interest or the said overdue principal. It will of necessity have to refuse payment of such indebtedness whenever demanded.

A meeting of the directors of the defendant railway company was held at the office of the company in New York, on July 21, 1892, at which the intention of the complainant to begin this suit and apply for a receiver for the mortgaged premises was made known to said directors and the condition of the company was con-
42 sidered. It was the opinion and belief of said directors at said meeting, that the true interests of the company, its creditors and stockholders required that the application of the complainant for a receiver as prayed for in its bill should be granted, the said directors believing that otherwise suits at law might be begun by its creditors, its property be attached, the operation of its road interfered with and the interests of its stockholders and creditors generally made to suffer. The said directors also direct counsel of the company to request that Robert B. Cable be appointed such receiver.

CHARLES C. DEMING.

Subscribed and sworn to before me this 21st day of July, 1892.

JOHN BENNETTO,

[SEAL.] *Notary Public* (127), *New York County.*

[Endorsed:] U. S. circuit court for the northern district of Florida. The Pennsylvania Company for Insurances on Lives and for Grant-

ing Annuities against the Jacksonville, Tampa and Key West Railway Company. Affidavit. File of date July 23d, 1892. Don A. Pardee. Filed July 23, 1892. Philip Walter, clerk.

43 In the Circuit Court of the United States for the Northern District of Florida.

THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND FOR GRANTING ANNUITIES, Complainant,
*against*
THE JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY, Defendant.
} In Equity.

Now, on this 23d day of July, A. D. one thousand eight hundred and ninety-two, comes the complainant by John W. Simpson, Esq., its solicitor and counsel, and also comes the defendant by A. H. Joline, Esq., its solicitor, and the said complainant exhibits to the court its sworn bill of complaint herein, verified on the 21st day of July, A. D. 1892, and makes application for the appointment of a receiver as therein prayed, and said application coming on to be heard upon said bill or exhibit and the affidavit of —— ——, and it appearing that the defendant consents to the granting of the said application, and admits the averments of the bill, and that both parties to this cause unite in the request that, if the said application be granted, Robert B. Cable, Esq., be named as such receiver, and the matter having been fully presented to the court, and the court being fully advised in the premises, it is, upon consideration,

Ordered, adjudged and decreed that said application be and the same is hereby granted as follows:

44 *I.* Robert B. Cable, Esq., is hereby appointed receiver of all the property, equitable interests, things in action, effects, money, receipts, earnings, rights, privileges, franchises and immunities of the said defendant railway company covered by the mortgage or deed of trust to the complainant, mentioned and described in the said bill of complaint wheresoever the same or any part thereof may be situated, with all the powers, rights and duties of receivers in like cases, and with the powers rights and duties as herein set forth.

II. The said receiver shall forthwith enter upon and take possession of all and singular the said property, interests, things in action, effects, money, receipts and earnings, rights, privileges, franchises and immunities, and have, hold, use, operate, exercise and enjoy the same, and operate and manage the railroad of the defendant railway company with its appurtenances, until the further order of the court, obeying in all things the order of this court.

III. And it is further hereby ordered that said defendant railway company, its officers and agents, or whoever may have possession thereof, deliver over to said receiver all and every part of the property, interests, effects, money, receipts and earnings, and all books, vouchers and other papers touching the same or any part thereof.

IV. It is hereby ordered that out of the moneys and income

coming into his hands from said property the said receiver pay all taxes imposed upon said property by State or municipal authority, and he is hereby authorized to pay for such repairs, supplies, labor and services as shall, in his judgment, be necessary or proper to conserve and operate the said railroad and other property. And he is hereby also authorized to pay indebtedness of the said
45 railway company heretofore incurred for expenses of operation during the — months next preceding the date of this order. And he is hereby further authorized to pay out of the income of said railway and other property interest hereafter becoming due and payable upon the bonds of the three constituent companies, by the consolidation of which the defendant railway company was formed, as set out in the said bill of complaint, which bonds are secured by mortgages to the Mercantile Trust Company, as set out in said bill of complaint.

V. The said receiver shall cause to be kept just, full and true accounts of his receipts and disbursements, and shall report his doings to this court, with such account, from time to time, and said receiver may apply to this court for instructions and for such further order or orders in respect to his action as said receiver as may from time to time be necessary or advisable.

VI. The said receiver shall take oath faithfully to perform his duties hereafter, and with one or more sureties shall execute to the clerk of this court, for the benefit of all concerned, a bond or undertaking, to be approved by a judge of this court or the clerk thereof, in the sum of fifty thousand dollars, conditioned for the faithful performance of his duties thereunder, and that he will in all respects obey the orders of this court as such receiver.

The said appointment of Robert B. Cable, Esq., as receiver, is provisional, to the extent that any person or party having an interest in the property of the defendant railroad company may show cause, within thirty days from this date, why the said appointment should not be confirmed. The appointment is also provisional so far as not to affect or forestall any action the court or any of its judges may hereafter see proper to take on any bill hereto-
46 fore filed in this court against said railroad company, wherein a receivership has also been prayed for.

July 23, 1892.

DON A. PARDEE,
*Circuit Judge.*

[Endorsed :] U. S. circuit court for the northern district of Florida. The Pennsylvania Company for Insurances on Lives and for Granting Annuities against The Jacksonville, Tampa and Key West Railway Company. Order appointing receiver. File of date July 23d, 1892. Don A. Pardee. Filed July 23, 1892. Philip Walter, clerk.

47 United States Circuit Court, Northern District of Florida.

THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND FOR GRANTING ANNUITIES
*vs.*
THE JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY.
} In Chancery.

The clerk will please enter my appearance for the defendant in the above cause.

T. M. DAY, JR.,
*Solicitor for Defendant.*

[Endorsed:] U. S. circuit court, northern district of Fla. The Pennsylvania Co. for Insurances, &c., *vs.* J., T. & K. W. R'y Co. Appearance for defendant. Filed this 27th day of July, A. D. 1892. Philip Walter, clerk, by Jno. S. Driggs, dep. clerk. T. M. Day, Jr., sol. for def't.

48 STATE OF FLORIDA,
*County of Duval.*

I, Robert B. Cable, appointed receiver of the properties of the Jacksonville, Tampa and Key West Railway Company by an order entered in the cause of The Pennsylvania Company for Insurances of Lives and for Granting Annuities *vs.* The Jacksonville, Tampa and Key West Railway Company, now pending in the circuit court of the United States for the northern district of Florida, do solemnly swear that I will faithfully perform my duties as such receiver; so help me God.

ROBERT B. CABLE.

Sworn to and subscribed before me this 27th day of July, A. D. 1892.

PHILIP WALTER, *Clerk.*
[SEAL.] JNO. S. DRIGGS, *Dep. Clerk.*

[Endorsed:] U. S. circuit court, northern dis. of Fla. Pennsylvania Co. for Insurances, &c., *vs.* J., T. & K. W. R'y Co. Oath of receiver. Filed July 27, 1892. Philip Walter, clerk, by Jno. S. Driggs, dep. clerk.

49 Circuit Court United States, Northern District of Florida.

THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND FOR GRANTING ANNUITIES
*vs.*
JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY, Defendant.

*Petition of Intervention by the American Construction Company.*

Your petitioner, The American Construction Company, respectfully alleges that it is a corporation duly organized and existing under the laws of the State of Illinois; that on or about the 6th day of July, 1892, it filed its bill in equity in this court against the said The Jacksonville, Tampa and Key West Railway Company, duly praying for the appointment of a receiver and for other relief, to which said bill and exhibits and affidavits in support thereof, reference is hereby prayed as often as may be necessary; that on or about the date last aforesaid this honorable court temporarily enjoined the defendant railway company from doing certain acts and things, and ordering the said company to show cause on or before the 11th day of the said month why a receiver should not be appointed of its properties and franchises; that on the said last-mentioned date the said railway company moved this court for further time to prepare to resist the motion for a receiver and to prepare to show cause why a
50 receiver should not be appointed, representing that they could show good cause why a receiver should not be appointed. That on such representations this court extended the time to show cause to the 28th day of July, 1892; that afterwards, to wit, on the 23d day of said month, the said defendant company caused a collusive suit to be brought by the above complainant in this court, and the said defendant railway company consenting thereto, on the application of said complainant, his honor Don A. Pardee, circuit judge, granted an order appointing one Cable, general manager of said company, provisional receiver of the properties of the said company; and your petitioner prays reference to the bill and affidavits on which the said receiver was appointed.

Your petitioner respectfully shows that it appears by examination of the bills and exhibits and affidavits in the two causes above mentioned that the said suit was collusive; that the Hon Don A. Pardee, judge, &c., was imposed upon, and that the said Cable is the manager and appointee of the directors of the said company against whom your petitioner in its bill has made charges of gross fraud, mismanagement and reversions of the funds of the said company; and that the said directors or all of them are the owners of the floating debt mentioned in the said bill, and are the very persons, if anybody, who *has* applied to the above-named complainant to bring the suit wherein the said Cable has been appointed receiver. And that it fully appears by the pleadings and proceedings aforesaid that the said railway company and its directors represent and con-

trol both the defendant and the complainant in the suit last above mentioned.

Wherefore, and for divers other good causes appearing of record in the pleadings and exhibits and affidavits aforesaid, to which reference is prayed, your petitioner prays leave to file this petition in the above-entitled cause, and prays that the order appoint-
51 ing a receiver be set aside and vacated, and that all proceedings in the above-entitled cause be stayed until the further order of this court.

Your petitioner prays for such other, different and further relief as to this honorable court may seem just and equitable; and your petitioner will ever pray, &c.

THE AMERICAN CONSTRUCTION CO.,
Per H. BISBEE, *Its Agent and Solicitor.*

[Endorsed :] Circuit court United States, northern district of Florida. The Pennsylvania Company for Ins. on Lives and Granting Annuities *vs.* Jacksonville, Tampa & Key West Railway Company. Petition of intervention. Filed this 29th day of July, A. D. 1892. Philip Walter, clerk, by Jno. S. Driggs, dep. clerk.

Please take notice that application will be made to file the foregoing petition and for the orders therein prayed for at three o'clock p. m. this 28th day of July, A. D. 1892, or as soon thereafter as the court will hear the motion.

H. BISBEE,
*For Petitioner.*

To Cooper & Cooper, Esqs., counsel for some of the parties, Messrs. Fletcher & Wurts.

52 Circuit Court United States, Northern District of Florida.

THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND FOR GRANTING ANNUITIES, Complainant,
*vs.*
JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY, Defendant.
} In Equity.

This cause came on to be heard on the 28th day of July, 1892, on the motion of the American Construction Company, which had intervened therein, and which is also complainant in another suit in equity against the said defendant and others, in the bill filed on the 6th day of July, 1892, praying for the appointment of a receiver.

The said motion and petition of intervention of the said American Construction Company prayed for an order vacating the order entered in the above-entitled cause on the 23d day of the month of July, aforesaid, appointing Robert B. Cable, Esq., receiver, and staying all further proceedings in said cause.

On consideration thereof, and of the said several bills in equity and the affidavits and exhibits in support thereof, it is ordered, adjudged and decreed that the aforesaid order appointing Robert B.

Cable receiver of the properties of the Jacksonville, Tampa
53 and Key West Railway Company be, and the same is hereby, set aside and vacated, and all further proceedings in the above-entitled cause stayed until the further order of this court.

Done in open court this 4th day of August, A. D. 1892.

CHAS. SWAYNE,
*U. S. Judge.*

[Endorsed:] U. S. circuit court, fifth judicial circuit, northern district of Florida. Penn. Co. for Insurances of Lives, etc., *vs.* Jacksonville, Tampa and Key West Railway Co. Order vacating appointment of Rob't B. Cable, as receiver. Filed August 4th, 1892. Philip Walter, clerk, by Jno. S. Driggs, dep. clerk.

54 To the honorable the judges of the circuit court of the United States, northern district of Florida, in equity:

The American Construction Company, a corporation duly organized and existing under the laws of the State of Illinois, and a citizen of that State, exhibits this its bill of complaint against the Jacksonville, Tampa and Key West Railway Company, a corporation organized and existing under the laws of the State of Florida, and a citizen of that State, the Florida Construction Company, a corporation organized and existing under the laws of the State of New Jersey, and Robert H. Coleman, a citizen of the State of Pennsylvania, and the president of and director of the said railway company; Charles C. Deming, the vice-president of and director of the said railway company, and citizen of the State of New York; and against Archibald Rogers, a citizen of the State of New York, John W. Candler and Frank Q. Brown, citizens of the State of Massachusetts, which said Rogers, Candler and Brown are directors of the said railway company; and the Florida Commercial Company, a corporation organized and existing under the laws of the State of Florida, and a citizen of that State.

And thereupon your orator complains and alleges:

1st. That your orator is a corporation duly organized and existing under the laws of the State of Illinois, and that it prosecutes this suit in behalf of itself and all other stockholders, of
55 the Jacksonville, Tampa and Key West Railway Company, who may choose to come in and contribute to the expense of this suit.

2d. That the Jacksonville, Tampa and Key West Railway Company is a corporation organized and existing under the laws of the State of Florida; that the original name of the said company was the Tampa, Peace Creek and St. John's River Railway Company, which name was duly changed to its present name; that the said company was created and organized under the general corporation laws of the State of Florida, and was vested with the power, authority, and franchise to construct a railway from Tampa, in the State of Florida, to Jacksonville, in the State of Florida, and that the said company was organized in the year 1879 or 1880.

3d. That subsequently the Palatka and Indian River Railway Company was organized and existed under a special act of the legislature of the State of Florida of March 4, 1881, and was vested by its charter with power and franchise to construct a railway from Putnam county, State of Florida, to a point on Indian river, in East Florida, at or near a place known as Aurantia; that the Jacksonville and Palatka Railway Company was a corporation organized and existed under the general incorporation laws of the State of Florida, in the year 1883, and vested with the power and franchise to construct a railway from Jacksonville, aforesaid, to Palatka, aforesaid; that afterward to wit, on the 14th day of March, 1883, the two companies last above mentioned were consolidated in accordance with the laws of the State of Florida, and that the consolidated company, by agreement, took the name of the Palatka and Indian River Railway Company, and that afterwards the said Palatka and Indian River Railway Company became duly consolidated in
56 accordance with the laws of the State of Florida, by agreement, with the Jacksonville, Tampa and Key West Railway Company, and that such consolidation took effect on about the 4th day of April, 1887.

4th. Your orator alleges that on or about and prior to May 1st, 1890, the said The Jacksonville, Tampa and Key West Railway Company was the owner and in control of and operating a line of railway from Jacksonville, aforesaid, to Sanford, in Orange county, State of Florida, and also a branch railroad from Enterprise Junction, in Volusia county, to the town of Enterprise, in said county; that the Atlantic Coast, St. John's and Indian River Railway Company was a corporation duly organized, and existed under the general incorporation laws of the State of Florida and was the owner of and in control of and operating a line of railroad from Enterprise, aforesaid, to the town of Titusville, in Brevard county, State of Florida, and that at the same time the Sanford and Lake Eustis Railroad Company was a corporation organized and existing under the general incorporation laws of the State of Florida, and was the owner of and in control of and operating a line of railroad from the town of Sanford, aforesaid, to the town of Tavares, in Lake county, State of Florida; that on or about the 8th day of May, 1890, the two railway companies last above mentioned were consolidated with the said The Jacksonville, Tampa and Key West Railway Company, and the latter company became the owner of the properties of the two companies aforesaid; that on or about the 27th day of May, 1890, the De Land and St. John's River Railway Company, which before that time had been duly organized under the general incorporation act of the State of Florida, with the power to construct a railroad from the St. John's river to the town of De Land, in Volusia county, and which then owned and was in control of and operating a
57 railroad between the termini aforesaid, conveyed to the Jacksonville, Tampa and Key West Railway Company all its railroad lying east of the place known as De Land Junction, in the county of Volusia, at which junction the said Jacksonville, Tampa and Key West Railway Company crosses the line of the said St.

John's River Railway Company; and that, on or about the date last aforesaid, to wit, in May, 1890, the said The Jacksonville, Tampa and Key West Railway Company, which will hereafter be designated as the defendant company, was the owner of and in control of and operating a line of railway from Jacksonville to Sanford, and from Sanford to Tavares; from Enterprise Junction to Enterprise, and thence to Titusville aforesaid; and the short line above mentioned east of De Land Junction.

Your orator alleges that the distance from Jacksonville to Sanford, on the line of the said railway, is about one hundred and twenty-five miles; from Enterprise Junction to Titusville about forty-one miles; the distance from Sanford to Tavares is about thirty miles; from De Land Junction to De Land about four miles, making a total mileage of about two hundred miles, all of which lines are situate in the State of Florida and within the northern district of Florida.

That the said lines of railway are well equipped with a large amount of valuable rolling stock, implements and appliances, and have large and valuable improvements at the termini, stations, workshops and terminal rights under valid existing contracts.

5th. That your orator was organized for the purpose of carrying on the business of constructing railroads and for other purposes incidental thereto and heretofore, to wit, on or about the 30th day of November, 1881, entered into a contract with the said The Palatka and Indian River Railway Company, to construct its railway from a point at or near Palatka to a point at or near Aurantia on the Indian river.

58 That your orator entered upon the performance of the work provided for in said contract, and built part of the said line of road, and, under the terms of the said contract became the owner of all of the capital stock of that company, and that the amount of said stock was $3,000,000 par value, and was of the same amount at the time of the said consolidation with the defendant company.

That afterwards your orator entered into a contract with the defendant The Florida Construction Company, under and by virtue of which the latter company became bound, and covenanted and agreed to finish and complete the said railway from Palatka to Aurantia, and your orator transferred and assigned to the said construction company all of the said stock owned by it, except $337,500 par value, for which latter stock upon the said consolidation and by the terms thereof, your orator became entitled to stock in the consolidated Jacksonville, Tampa and Key West Railway Company, amounting at par value to $168,750; that is to say, one share in the latter company for two shares of the original stock in the said Palatka and Indian River Railway Company.

And your orator avers that it is now, and since the consolidation aforesaid has been, the owner of the said last-mentioned amount of stock, although the certificates of stock have not been issued to your orator, and that this suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance.

6th. That the defendant The Florida Construction Company was organized about the 22d day of June, 1881, under and in accordance with the laws of the State of New Jersey, for the purpose of doing business of constructing railways and for other purposes incidental thereto.

That on or about June 27th, 1881, the said construction
59 company entered into a contract with the said The Tampa, Peace Creek and St. John's River Railway Company, which afterwards duly took the name of the defendant company, to build and equip its line of railroad from Tampa to Jacksonville upon certain terms in the said contract stated.

That the said construction company commenced to build and did build that part of the present line of railroad of the defendant company between Jacksonville and Palatka, and that part from Palatka to Sanford, which had not been constructed and finished by your orator under the contract between it and the aforesaid Palatka and Indian River Railway Company.

That the said Florida Construction Company received in payment for the work and labor of constructing the said line of railroad a large amount of the capital stock of the said defendant company, and a large amount of the first-mortgage bonds of the defendant company, and became the owner of a majority of the stock of the defendant company.

7th. That the said defendant company, on or about September 24th, 1888, entered into a contract with the Florida Commercial Company, another corporation then and now existing under the laws of the State of Florida, whereby the defendant company purchased of the said Commercial Company all, or nearly all, of the bonds and stock of the Florida Southern Railway Company, and of the stock of the St. John's and Lake Eustis Railway Company. That the said The Florida Southern Railway Company then owned and was in control of and operating a line of railway from Palatka to Gainesville, in Alachua county; from Gainesville to Brooksville, in Hernando county; and from Bartow, in Polk county, to Charlotte Harbor, on the Gulf of Mexico, in the county of Manatee.

60 That the length of the road of the said Florida Southern Railway Company was and is about three hundred miles together with the several branches thereof, and the said St. John's and Lake Eustis Railway Company then owned and was operating a line of railway from the place known as Astor, on the St. John's river, to Fort Mason; thence to Tavares and to Leesburg, a distance of about fifty miles.

That the said defendant company purchased bonds and stock of the said two railway companies for the purpose, as your orator is informed and believes, of ultimately becoming the purchaser and owner of the railroads of the two companies and their several branches, and that afterwards, to wit, in March, 1890, the said The Florida Southern Railway Company, having defaulted in the payment of its interest on its bonds, the trustees, to wit, the New England Trust Company and the American Loan and Trust Company, commenced suits to foreclose the mortgages given by the said The

Florida Southern Railway Company to secure its bonds to the par value of about $3,000,000, and that such proceedings were had in the said suits that final decrees of sale were entered therein, and that a sale of the said lines of railroad of the Florida Southern Railway Company was held and made in the early part of March, 1892.

That at the sale aforesaid, the said defendant company became the purchaser thereof and the beneficial owner, although, in point of form, the bids were made by one Hyde and one Frank Q. Brown on behalf of the said defendant company.

Whether or not the said defendant company or the said Hyde and Brown have organized any new company, and, if one has been organized, whether or not the said railroad properties last mentioned have been conveyed to said new company, your orator does not know, but your orator alleges that the ownership of the
61 said last-mentioned lines of railroad formerly owned by the Florida Southern Railway Company, is now claimed by the said defendant company.

Your orator alleges that the defendant company paid for the stock and bonds of the said Florida Southern Railway Company and the stock of the St. John's and Lake Eustis Railway Company by issuing a series of bonds known as collateral trust bonds, amounting, in the aggregate, to the sum of $3,592,000 par value.

That, in pursuance of the contract of purchase aforesaid, the defendant company delivered its collateral trust bonds to the said The Florida Construction Company, and received the said bonds and stock of the said Florida Southern Railway Company and the said stock of the said St. John's and Lake Eustis Railway Company, but that the defendant company pledged and hypothecated the stock and bonds of the said railway company as collateral security for the said bonds of the said defendant company. That, if the said contract and the execution thereof was valid, the said collateral trust bonds are a valid and existing indebtedness of the said defendant company, and, although not secured by any mortgage on the property of the said defendant company, they are secured by mortgage on the bonds and stock of the said The Florida Southern Railway Company, and on the stock of the said The St. John's and Lake Eustis Railway Company.

Your orator alleges that the aforesaid contract between the Florida Commercial Company and the said defendant company, under which it purchased bonds and stock of the said Florida Southern Railway Company and stock of the said St. John's and Lake Eustis Railway Company, and paid for the same in bonds of the said defendant company, is illegal and voidable; that your orator does not know and has no means of knowledge, except by discovery herein prayed for on the part of the defendant company to this action, whether or not the said contract was beneficial to your
62 orator as a stockholder of the said defendant company, and hereby reserves the right, when it has acquired full knowledge of all the facts and circumstances attending the said purchase

under the said contract and the effect thereof, either to repudiate or to ratify the same.

Your orator is informed and believes and avers, on information and belief, that the said contract and purchase of bonds and stock of the said Florida Southern Railway Company and of the stock of the said St. John's and Lake Eustis Railway Company was for the purpose of acquiring ownership of the lines of railway owned by the said several companies consolidating the same with and making them part of the railroad of the said defendant company.

8th. That the said defendant company, under its charter and under the several acts and laws of the legislature of the State of Florida donating lands to the said defendant company and to the several companies becoming incorporated therewith and part thereof, to aid the said several companies in constructing their railroads, has become entitled to large bodies of land from the State of Florida, or from the board of trustees of the internal improvement fund of the State of Florida, to the amount of 2,000,000 acres, more or less, and of the value of $1,000,000 and upwards.

That your orator does not know and has no means of knowledge, except by discovery from the defendants, what portion of the said lands has been conveyed to the said defendant company, or what steps or exertions have been made on the part of the said company to acquire deeds of conveyances of the lands aforesaid.

9th. Your orator avers that all of the said several lines of railway owned and operated as aforesaid by the said defendant company are substantially well built and well and adequately equipped
63 with rolling stock and all requisite machinery and appliances for the efficient operation of the said road and the transportation of freight and passengers adequate for its present business, and for a large increase of said business, which your orator alleges under proper management must necessarily accrue in the immediate future to the said company.

That the territory through which its several lines of railroad run is increasing in population, wealth and business. That its connections with other railroads in this State are of great value, and give every assurance and promise of a large increase to its revenue in the future.

Your orator avers that the net earnings of the said railroad properties of the said defendant company are now, and for several years have been, adequate and sufficient to pay the interest upon all of its outstanding bonds and taxes assessed thereon by the State of Florida in the several counties through which the said railroad runs, and to pay all fixed charges on the said railroad properties. That its gross and net receipts are steadily increasing and its operating expenses steadily decreasing proportionately.

Your orator avers that the steady growth in population, wealth and business in that part of the State of Florida through which the said several lines of railroad run make it certain that, under good and careful business management, the population and business along the line of the said road will constantly increase, and with reasonable rapidity, and that the revenues and income upon the said lines

of road give ample promise and assurance of being sufficient to pay all the indebtedness of the said defendant company, and to pay a fair, if not large, remuneration to the stockholders of the said company, whose money has been expended in the construction, purchase and development thereof.

64 10th. Your orator avers that the total capital stock of the said defendant company, representing all of the said several lines of railroad, of which it is the owner and in possession of as aforesaid, is $3,010,000 par value, of which amount of capital stock your orator is the owner and entitled to have certificates for $168,750. That the said defendant The Florida Construction Company is the owner of and entitled to have certificates for, as your orator is informed and believes, and on information and belief alleges, $2,715,300.

That one Mason Young is the owner of and entitled to have certificates for $70,000.

That the balance of said stock, to wit, $55,950, is held by several persons to your orator unknown.

Indebtedness and obligations of the company.

11th. Your orator avers that the said defendant company owes a bonded indebtedness as follows, to wit:

That the said railroad from Jacksonville to Sanford, and the branch road from Enterprise Junction to Enterprise, are subject to a bonded debt secured by mortgage to the amount of $1,565,000, payable in the year 1914, which series of bonds your orator designates as class 1, and that the said indebtedness is the obligation of the said defendant company.

That the said road from Enterprise to Titusville is subject to a bonded indebtedness, secured by mortgage, of $360,000, due and payable in the year 1906, which series of bonds your orator designates as class 2, and is a legal liability of the said defendant company.

That the said railroad from Sanford to Tavares is subject to a bonded indebtedness, secured by mortgage, to the amount of $290,000, due and payable in the year 1916, and which constitutes a valid indebtedness and obligation of the said defendant company, which your orator designates as class 3, making the total amount of first-mortgage indebtedness $2,216,000.

65 That, in addition to the aforesaid indebtedness, the said defendant company on or about the 15th day of May, 1890, executed a series of bonds, known as consolidated mortgage bonds, to the amount of $4,000,000, par value, at six per cent. interest, payable in the year 1940, and which said series of bonds is secured by mortgage upon the entire line and system of railroads owned by the said defendant company from Jacksonville to Sanford, from Sanford to Tavares, from Enterprise Junction to Titusville, and from De Land Junction to De Land, and also secured by mortgage upon all the lands and land grants of the said defendant company which it

is entitled to under the laws of the State of Florida, and upon its rolling stock and equipment.

That, of the said amount of $4,000,000, $2,216,000 are held by the mortgage trustees, to wit, The Pennsylvania Company for the Insurance of Lives and Granting Annuities, a corporation created by and existing under the laws of the State of Pennsylvania, for the redemption and payment of the aforesaid bonds hereinbefore designated as classes 1, 2 and 3, and the remainder of the said $4,000,000 of bonds, to wit, $1,784,000, are held as security for the floating and otherwise unsecured indebtedness of the said defendant company.

That, in addition to the aforesaid indebtedness of the said defendant company, the said company issued two series of bonds known as equipment bonds, issued and applied to the purchase of equipment and secured by mortgage on a portion of the equipment of the said company, the amount of which now outstanding does not exceed $70,000.

That, in further addition to the said bonded indebtedness of the said company, the said company issued a series of bonds to the amount of $3,592,000, known as collateral trust bonds, as hereinbefore stated, which were issued by the said defendant company for the purpose, and which were applied for the purpose of carrying out the contract hereinbefore set forth between it and the said The Florida Commercial Company for the purchase of the bonds and stock of the said The Florida Southern Railway Company, and stock of the said The St. John's and Lake Eustis Railway Company.

66

12th. Your orator alleges that, prior to the aforesaid contract between the defendant company and the Florida Commercial Company, the board of directors of the said Florida Construction Company and of the said defendant company was substantially identical; that is to say, of the nine directors of the said construction company, seven were directors of the said defendant company. That, under and by virtue of the said contract the said The Florida Commercial Company had the right to designate two of the directors of the said defendant company. That the board of directors of the said defendant company consists of the number of seven, and has consisted of that number for several years. That the present board of directors of the said defendant company consists of Robert H. Coleman, president, and a citizen of the State of Pennsylvania; Charles C. Deming, vice-president, and a citizen of the State of New York; Archibald Rogers, a citizen of the State of New York; Frank Q. Brown and John W. Candler, citizens of the State of Massachusetts; and that there are two vacancies in the said board, and that all of the said directors are also directors of the said Florida Construction Company, except the said Brown and Candler, and constitute a majority of the board of directors of the said defendant company and the said construction company.

And your orator avers that the treasurer of the said defendant company is Hugh M. Maxwell, a citizen of the State of Pennsylvania whose office as such treasurer is at No. 10 Wall street, New

67 York city, State of New York, to whom all the net earnings of the said company are remitted.

Your orator also avers that the said Robert H. Coleman holds a majority of the stock of the Florida Construction Company and controls the election of its directors and officers, and that the said officers have control and direction of the finances and general business of the two companies, to wit, the Florida Construction Company and the defendant company, — are substantially the same.

13th. Your orator is informed and believes, and upon information and belief alleges, that in the month of March, 1892, at a meeting of the stockholders of the said defendant company, a majority of the said stockholders authorized another series of bonds to be issued, to be denominated second-mortgage bonds, for the purpose of securing an indebtedness of the said defendant company to its president, Robert H. Coleman, more particularly hereinafter mentioned.

Your orator avers that there is actually outstanding in the form of promissory notes and otherwise of the said defendant company a large floating indebtedness, which is secured in part by the aforesaid remaining consolidated bonds, but your orator does not know what portion of the said floating indebtedness is valid and legal, and what portion is invalid and fraudulent, and has been unable, as hereinafter stated, to ascertain from official statements and reports of the financial officers of the said defendant company the amount of said indebtedness, but your orator alleges on information and belief, that the said floating indebtedness approximates the sum of $2,000,000.

And that the said floating indebtedness, according to the official reports of the said financial officers, on the balance-sheets of the said defendant company, increased as follows: On December 31, 1888,

68 the said floating indebtedness, represented in bills payable, as stated in the balance-sheet of that date, was about $10,000; June 30, 1890, the said floating indebtedness, as stated by the balance-sheet of that date, was $243,702.98; on June 30, 1891, the said floating indebtedness, as stated by the balance-sheet of that date, was represented to be $1,787,784.75; for more particular statement of which said floating indebtedness reference is prayed to Schedule "B," hereto attached, prayed to be taken as part of this your orator's bill of complaint with the usual power of reference.

14th. That, for several years past, the board of directors of the defendant company has consisted, and it does now consist, of persons who are not citizens of the State of Florida, but citizens of several other States of the Union; and that, at the present time, there is not a member of the said board of directors who is a citizen or resident of the State of Florida, and that the said directors are citizens of the States as hereinbefore stated, living at a considerable distance apart, that they hold meetings of their board very infrequently, and that it is difficult to reach said board to do any business with them, or submit any propositions or requests to them.

Your orator avers that no one of the said directors is now, or for some years has been, a beneficial owner of any of the capital stock of the said defendant company, or has any direct personal

interest as stockholder in said company, although your orator is informed and believes, and upon information and belief alleges, that the said directors have had stock transferred to their names by the said Florida Construction Company or otherwise, for the purpose of enabling them to be directors.

That, as hereinbefore stated, the Florida Construction Company owns a large majority of the capital stock of the said defendant company, and that the said Robert H. Coleman, president of
69 the said defendant company, as your orator is informed and believes, also controls the election of the president and of the other officers of the Florida Construction Company, and that he holds a majority of the capital stock of the said construction company, and, by authority of that company, the said Robert H. Coleman votes the stock of the defendant company owned, as aforesaid, by the said Florida Construction Company, or that the said stock is voted by some other person, as the substitute of the said Robert H. Coleman, at the request and instance and in compliance with the wishes of the said Robert H. Coleman, and, thereby, the said Robert H. Coleman controls the appointment of all officers, administrative and executive, and the whole conduct and management of the railroad of the said defendant company, the disposition and management of its moneys, assets and accounts, in all respects as to both external and internal relations.

15th. That, although the said Florida Construction Company is not now, and has not been for several years, engaged in the construction of any railroad, it is the owner of the capital stocks of the Indian River Steamboat Company and of the Jupiter and Lake Worth Railway Company, corporations organized and existing under the laws of the State of Florida, and doing the business in Florida of operating the said railroad and the said steamboats on the said river.

That the cost of construction and maintaining the properties of the said companies and of operating the same was paid, in large part, out of the funds of the said defendant company, and for money paid on this account, amounting, as your orator is informed and believes, to about $200,000, the said defendant company holds no security whatever, but that the same forms part of the large indebtedness of the Florida Construction Company to the said defendant company, hereinafter mentioned.

70 That said construction company, as owner of the stock of said two companies last named, elects and controls the appointment of the officers of the said companies.

That the said Florida Construction Company has no income whatever, except such as may be derived from obligations of the said defendant company held by it, and that the cost of operating the steamboats of the said Indian River Steamboat Company and the road of the said Jupiter and Lake Worth Railway Company, which always, during the summer months, exceeds the receipts of the said companies, is, your orator is informed and believes, paid out of the treasury of the said defendant company.

Your orator avers that the charging to the defendant company

of the expenses of construction and equipment and of the management and control of the said properties, while the ownership of such properties was and is in companies of which the capital stock is substantially, or wholly, owned by and controlled by said construction company, was illegal and void and unjust and unfair to the stockholders and creditors of the said defendant company, and has never been consented to by your orator, and, in fact, was done without your orator's knowledge.

16th. Your orator alleges that the said The Florida Construction Company at one time during the transactions hereinbefore stated owned a large amount of indebtedness in the form of promissory notes and bills payable and in other forms, for which indebtedness the said Robert H. Coleman, its president and principal stockholder, was liable, either as endorser or surety; and that the said Robert H. Coleman and the said Florida Construction Company afterwards caused notes of the said defendant company to be executed and to be substituted, from time to time, for the notes of the
71 said construction company, thus relieving the said construction company from its indebtedness, and relieving the said Robert H. Coleman from his liability as endorser and surety upon obligations of a corporation bankrupt and insolvent, as hereinafter set forth, and imposing, without any consideration, large liabilities upon the said defendant company, and thereby largely increasing in form the indebtedness of the said defendant company.

And your orator charges that said actions and doings were illegal without any legal consideration, and a great wrong and injury to the creditors and stockholders of the said defendant company, and that such actions and doings were not consented to by your orator, and, in fact, were done without your orator's knowledge.

17th. Your orator avers that the balance-sheet of the Florida Construction Company, dated October 1st, 1889, and issued by its financial officers, who were also the financial officers of the said defendant company, showed and exhibited an indebtedness of the said defendant company to the said construction company amounting to $500,113.03.

That this sum does not include an item mentioned in the balance-sheet of the said defendant company, dated June 30th, 1890, of its indebtedness to the construction company to the amount of $63,675.98; and your orator charges that in the latter part of 1889 and early part of 1890 the financial officers of the said defendant company, being identical with the financial officers of the Florida Construction Company, had so managed, manipulated and stated the accounts between the two companies that it appeared from such accounts that the said defendant company was indebted to the construction company upwards of half a million of dollars.

Your orator charges that quite recently a demand was made upon the financial managers and officers of the said defendant company, by and in the interest of your orator and other stockholders,
72 to have an expert accountant examine the books and accounts of the said defendant company for the purpose of ascertaining the exact and true condition of its accounts, and the exact and

true state of the accounts between said defendant company and the Florida Construction Company, and that the said request was refused and denied by the board of directors of the defendant company; but your orator avers that, in consequence of such application and request, a partial investigation and examination of the accounts aforesaid was had, and that such partial investigation of accounts showed that the said defendant company was not indebted to the said construction company at all, but that the said construction company was indebted to the said defendant company in the sum of over $800,000. For greater particularity in respect to such indebtedness, your orator refers to Schedule "A," annexed to this bill, prayed to be taken as part thereof, with the usual power of reference.

And your orator charges and avers that, if proper allowance were made for interest charges upon the said several items of account, and other corrections were made, the said construction company would be found indebted to the said defendant company in a sum exceeding one million dollars.

That, notwithstanding the said large indebtedness of the said construction company to the defendant company, the latter, as appears from the report of its general manager, during the year ending June 30th, 1891, paid the sum of $31,340 on coupons for interest on the bonds of the said The Atlantic Coast, St. John's and Indian River Railway Company, such bonds being class 2 of the bonded indebtedness of the said defendant company, hereinbefore more particularly described, which were actual obligations of the said defendant company, bearing interest at the rate of six per cent.; which sum was paid by the direction and with the assent of the
73 said Robert H. Coleman and of the said Charles C. Deming, in their respective official capacities, and included interest on $225,000 of the said bonds then held and owned by the said Florida Construction Company, and this, too, when, in point of fact, no interest was paid by the said Florida Construction Company to the said defendant company upon the amount aforesaid of over $800,000 due from it to the said defendant company.

18th. Your orator avers that the said Robert H. Coleman claims to own and hold interest-bearing promissory notes of the said defendant company, which represent a floating indebtedness of the said company to the amount of about $1,800,000.

19th. Your orator alleges that it has been informed and believes, and upon information and belief alleges, that there is a large discrepancy of between three and four hundred thousand dollars between the amount of the floating indebtedness of the said defendant company, as it stands admitted on the books of the said company, and the amount of such floating indebtedness as it ought to be by comparison of the profits and losses, resources and expenditures, as reported by the financial officers of the said defendant company; and that said discrepancy has not been explained to your orator, although such explanation has been requested.

Your orator avers that the said board of directors of the defendant company seldom meets; that there is no executive committee

of the said board and that when the said board does meet no financial statements or reports are made to it by the officers of said company, and that the said board does not, by itself or by any executive committee, or by any officer or auditor appointed by the said board, supervise, examine and investigate, and approve or disapprove the accounts of the said defendant company.

74 That the books of account and business of the said defendant company, other than those relating to the mechanical operation of the said road, have been carelessly and inaccurately kept, and that it is impossible for any but an expert accountant to ascertain the true state of its financial affairs; that the official returns of the financial officers, made in accordance with the laws of the State of Florida, are wholly inaccurate and untrue, and that it is impossible to reconcile its successive annual reports and balance-sheets with each other or with the official returns, aforesaid, to the State of Florida upon any known principles of accounting and of mathematics.

That such a state of the accounts and business of the said defendant company seriously affects the value of its bonds and of its negotiable paper and renders it difficult, if not impossible, to convince investors of the safety of its securities and to induce them to invest therein, and that, by reason of such condition of affairs and of the state of accounts and acts and doings hereinbefore mentioned, a feeling of distrust and strong suspicion has arisen of fraudulent management and fraudulent misapplication of the revenues of said company, not only in the minds of the officers of your orator, but also in the minds of other persons interested in the affairs of the said company.

That there are many outstanding claims of the said defendant company against other companies and individuals which have been allowed to remain unsettled, and which could have been settled, and in all probability can now be settled, to the great advantage of the said defendant company if attended to with due diligence and promptness.

And your orator avers, upon information and belief, that the said board of directors of the said defendant company recently authorized its president, Robert H. Coleman, upon his assertion and demand, and without investigation, that the defendant com-

75 pany owed him a large sum of money for bills payable of the defendant company, which he had taken up and paid, to sell and dispose of some of the consolidated bonds of the said defendant company at the rate of eighty-five cents on the dollar, or authorize the said Robert H. Coleman to take the said bonds at eighty-five cents on the dollar in payment of such indebtedness.

Your orator avers that, upon proper management of the business of the said defendant company and the proper application of the revenues of the said company, the said consolidated bonds not held for the purpose of redeeming the aforesaid first-mortgage bonds could be readily sold at a price higher than eighty-five cents on the dollar, if not at par. That, by reason of bad and inefficient management of the business affairs of the said defendant company, and

the reckless and extravagant disregard of its financial interests, and of the interests of your orator as a stockholder, your orator's rights in the premises have been seriously injured; the floating debt of the said company has increased from year to year, as hereinbefore stated, and this, too, in the face of the fact that the net earnings of the said defendant company above all operating expenses have constantly increased.

That the said net earnings for the year ending June 30, 1890, were $123,567.46; for the year ending June 30th, 1891, the said net earnings were $257,338.79; and for the ten months ending April 30th, 1892, the said net earnings were $306,821.78. For greater particularity and reference thereto, your orator attaches hereto schedule marked "C," which your orator prays may be taken and considered as part of this its bill of complaint with the usual power of reference.

Notwithstanding the large increase in the revenues and also in the bills payable representing the floating*ing* debt, the managers and officers of the said defendant company, as your orator is informed and believes, and upon information and belief alleges, have
76 failed to pay taxes upon the property of the said defendant company, due and payable to the State of Florida on the 21st day of November, 1891, to the amount of over $25,000, and that they have neglected and failed to pay other valid and incontestable claims against the said company which could have been paid, and which should have been paid, out of the said net earnings.

20th. That the certificates of stock have not been issued to your orator by the said defendant company to which it is entitled, although your orator has frequently made demand therefor, and that the same is true in respect to other persons entitled to certificates of stock in the said company.

That your orator, and other persons representing your orator and themselves, and in the interest of your orator and others as stockholders of the said defendant company, have on many, several and distinct occasions during the last year and a half applied to the proper officers of the said defendant company to have explanations made of the discrepancies and inconsistencies in the state of the accounts of the said company, and as to the enormous increase of its floating indebtedness, notwithstanding the rapid increase of its net earnings and as to the very heavy deficiency which the published and authorized accounts indicate, and as to the accounts between the said Florida Construction Company and the said defendant company, and those between the said defendant company and its president; and has, also, made frequent demand for the issue of its stock, and for general information in regard to the affairs of the company; but your orator avers that it has failed to obtain such information, and that the said officers and directors of the said defendant company, by reason of their inconsistent positions, being interested as stockholders and directors of the said construction company and as directors of the said defendant company, are
77 unable to give such information, and have utterly failed to

have prepared true statements of the accounts and explanations thereof, and have entirely neglected to issue to your orator the said stock; and your orator avers that, if the affairs of the said company were honestly and efficiently managed by officers and persons whose interests were in nowise hostile to the interests of the stockholders of the said defendant company, your orator's stock would be valuable property.

And your orator charges and alleges that the said enormous increase of the floating indebtedness of the said defendant company while its net revenues were constantly increasing, the shifting of the indebtedness of the said Florida Construction Company to the said defendant company, the large sums claimed by its president, Robert H. Coleman, to be due to him from the said defendant company, the enormous deficiencies between the amount of the floating debt and the accounts of the profits and losses, resources and expenditures of the defendant company, are, if not the result of fraud, the result of gross neglect and mismanagement.

And your orator avers that the true state of the accounts and conditions of the business of the said defendant company cannot be ascertained by your orator by reason of the facts hereinbefore stated, except upon examination thereof and statements made thereof by a competent expert accountant, under the direction of this honorable court, and that the said account your orator alleges ought to be taken in order to show and to disclose to your orator and all persons in interest whether the said mismanagement is the result of positive fraud or of negligence, carelessness and indifference on the part of the officers and agents of the defendant company.

And your orator charges and alleges that the accounts and affairs of the said defendant company have at all times been managed in the interest of the Florida Construction Company and its
78 stockholders, and not in the interest of the stockholders and creditors of the said defendant company.

Your orator avers that it has been reluctant to institute any legal proceedings against the defendant in this cause, and has waited for nearly a year and a half in the hope that, as a result of its applications and requests, aforesaid, it would be able to ascertain the true and honest state of the accounts and affairs of the said defendant company, and that the conduct and management of the road and property of the said defendant company would, under your orator's requests and remonstrances, be changed and corrected, and that the just expectations and rights of your orator and other stockholders would be respected and complied with; but your orator's expectations and hopes in the premises have been utterly disappointed, and your orator has become satisfied that its duty to its stockholders and creditors makes it imperative that it should invoke the aid of this honorable court to the end that more efficient and honest and adequate management of the affairs of the said defendant company and administration of its business and finances may be had, as hereinafter prayed for.

21st. Your orator further avers that the defendant The Florida Construction Company does not pay the just and reasonable claims

of its creditors, which are due and payable, and which have been properly presented to it and payment thereof demanded; that the assets of the said company are unmarketable; that some of its assets consist of the stock and securities of the defendant company, to which it is indebted in, at least, the sum of $800,000, and, probably, a much larger sum, and that the said construction company is utterly and hopelessly insolvent, and your orator further avers it to be a fact that the creditors of the said Florida Construction Company have already commenced, or are about to commence,
79 judicial proceedings against the said construction company to wind up its affairs, to dissolve the same and to distribute the proceeds of its assets to its several creditors, and that the progress of such judicial proceedings will, from time to time, during the pendency of this suit, be called to the attention of this honorable court.

All of which actings and doings are contrary to equity and good conscience, and tend to the manifest injury of your orator in the premises.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief prayed for, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, and that the said defendant corporations may, under their corporate seals, full, true, direct and perfect answer make to such of the several interrogatories hereinafter prayed and set forth as, by the note hereunder written, they are respectively required to answer; that is to say:

1st interrogatory. Whether or not the Jacksonville, Tampa and Key West Railway Company is the owner of and in possession of and operating the several lines of railroad as stated in the bill of complaint; and, if not, how otherwise?

2d interrogatory. Whether or not the Jacksonville, Tampa and Key West Railway Company, designated in the bill as the defendant company, acquired the possession, ownership and control of the several lines of railway, as stated in the bill; and, if not, how otherwise?

3d interrogatory. Whether or not the said defendant company entered into a contract between it and the Florida Commercial Company, under which contract the defendant company acquired
80 the ownership and possession of nearly all of the bonds and stock of the Florida Southern Railway Company. Whether or not the terms of the said contract are accurately stated in the bill of complaint; and the defendant company is hereby required to attach to its answer the original or a true copy of the said contract.

4th interrogatory. State whether or not the defendant company has issued the several series of bonds as stated in the bill of complaint; and whether or not its bonded indebtedness is as stated in the bill of complaint; and, if not, how otherwise?

5th interrogatory. State whether or not the floating indebtedness

of the defendant company has increased from year to year as stated in the bill of complaint; and, if not, how otherwise?

6th interrogatory. State whether or not the net earnings and revenues of the defendant company have increased from year to year as stated in the bill of complaint; and, if not, how otherwise?

7th interrogatory. State whether or not the defendant The Florida Construction Company is indebted to the said defendant company in a large sum of money, and state the amount of such indebtedness, and how it originated and arose, as fully and particularly as if interrogated in respect to each item of such indebtedness.

8th interrogatory. State whether or not the defendant company paid to the Florida Construction Company, or otherwise, over $30,000 during the year ending June 30, 1891, on account of interest claimed on bonds held or owned by the said Florida Construction Company as stated in the bill of complaint, and whether or not at the time of such payment the Florida Construction Com-
81 pany was indebted to the said defendant company in a large sum of money, and whether or not the said Florida Construction Company paid to the defendant company any interest on its said indebtedness.

9th interrogatory. State whether or not the promissory notes or other obligations of the defendant company have been substituted for the promissory notes or other obligations of the said Florida Construction Company; and, if so, in what amount and by whose direction?

10th interrogatory. State whether or not any promissory notes or other obligations of the said defendant company have been substituted for the promissory notes or other obligations of the said Florida Construction Company, on which the said defendant Robert H. Coleman, either in his individual or official capacity, was endorser or surety.

11th interrogatory. If you say that the promissory notes or obligations of the defendant company have been substituted for any of the promissory notes or other obligations of the Florida Construction Company, set forth accurately and particularly the amount of notes so substituted, the various and several times when it was done, and the consideration, if any, received by the defendant company for those notes and obligations so substituted.

12th interrogatory. State whether or not there exists a large floating indebtedness of the defendant company, the amount thereof, and by whom such indebtedness is held, and the consideration for which such indebtedness was created.

13th interrogatory. State whether or not the defendant Robert H. Coleman, either individually or officially, holds any of the
82 obligations of the defendant company representing its floating debt; and, if so, the extent and amount of such obligations, and the consideration paid for the same.

14th interrogatory. State whether or not there is a large discrepancy between the amount of the floating indebtedness of the said defendant company, as it stands admitted on the books of the said company, and the amount of its floating indebtedness as shown by

comparison of the profits and losses, resources and expenditures, as reported by the financial officers of the said company, and the extent of such deficiency, if any, and how the same originated.

NOTE.—Each and every of the defendants is required to answer the foregoing interrogatories, numbers 1 to 14, inclusive.

And may it please this honorable court by its decree to order and direct the Jacksonville, Tampa and Key West Railway Company to set forth and disclose under oath of its financial officer or officers the true state of its business and accounts, showing and exhibiting for the past four years its gross earnings; the amount paid for current and operating expenses each year; the net earnings and revenues of the said defendant company for each of the said four years, and to what uses and for what purposes the said net earnings have been disbursed and applied.

And require the said defendant company to fully and accurately state an account of all its business and transactions in detail, and file the same in this honorable court.

And may it please this honorable court by its temporary writ of injunction to enjoin and restrain the Jacksonville, Tampa and Key West Railway Company, its officers, agents and attorneys, each and every one of them, until the further order of this court, from substituting any of its notes and obligations for the notes and
83 obligations of the said The Florida Construction Company, or any other person or corporation; also to enjoin and restrain the said railway company and its officers, agents, attorneys and employees from remitting, sending or removing any of the income and revenues of the said defendant company from the jurisdiction of this court, either to its treasurer in New York, or to any other officer or person whatsoever; also to enjoin and restrain the defendant Robert H. Coleman, and each and every of said defendants, having in his or their control any of the $4,000,000 of six per cent. bonds, known as consolidated mortgage bonds, from selling or disposing, pledging or hypothecating, any of the said bonds at less than their par value, until the further order of this court. Also to enjoin the said The Florida Construction Company from voting by or through any of its officers, agents or proxies any of the stock of the defendant railway company owned or controlled by the said construction company.

And may it please this honorable court to appoint some fit and competent person to be a receiver of all the property, the railroads and rolling stock, machinery, depots, franchises and revenues of every nature and kind, and all the lands and claims to lands of the Jacksonville, Tampa and Key West Railway Company, to hold and possess the same and operate the said railroad until the further order of this court.

And may it please this honorable court by its decree to order and direct an accounting between the said Florida Construction Company and the said Jacksonville, Tampa and Key West Railway Company in order to accurately ascertain the indebtedness of the said construction company to the said defendant company; and by its final decree adjudge, order and decree the said Florida Construc-

tion Company to pay into the registry of this court the amount so found to be due to the defendant company.

84 And may it please this honorable court by its final decree to set aside, cancel and annul the contract set forth in the bill of complaint between the Florida Commercial Company and the said defendant company, if on full discovery of all the facts and circumstances attending such contract and the effect thereof, which is hereby prayed, it shall be for the interests and benefits of the complainant and other stockholders to have such contract canceled and annulled.

May it please the court to enjoin the said The Florida Construction Company from disposing of or pledging any of the stock of the Indian River Steamboat Company and of the Jupiter and Lake Worth Railroad Company until the further order of court.

And may it please this honorable court to grant to the complainants such other, different and further relief as to this court may seem just and equitable, and your orator will ever pray, etc.

And may it please this honorable court to grant unto your orator the most gracious writ of subpœna of the United States of America, directed to the defendants The Jacksonville, Tampa and Key West Railway Company, The Florida Construction Company, The Florida Commercial Company, Robert H. Coleman, Charles C. Deming, Archibald Rogers, Frank Q. Brown, and John W. Candler, as directors of the said Jacksonville, Tampa and Key West Railway Company, requiring them and each of them upon a certain day and under a certain penalty to be and appear before this honorable court to answer the premises and to stand to and abide such further order and decree as this court may have considered in that behalf.

And your orator will ever pray, &c.

AMERICAN CONSTRUCTION COMPANY, [SEAL.]
By EDWARD G. MASON, *Its Secretary.*

BISBEE & RINEHART,
*Complainant's Solicitors.*

85 STATE OF NEW YORK, }
*City and County of New York,* } *ss:*

Edward G. Mason, of full age, being duly sworn, according to law, on his oath says that he resides in the city of Chicago, Illinois; that he is a counsellor-at-law; that he is now and for several years last past has been a director of the American Construction Company; that he has been for some time the secretary of said company, the corporation named as complainant in the above bill of complaint; and that by means of his said offices he has acquired and possesses, as he verily believes, a great and particular knowledge of the matters stated in said bill; that he has read the above bill and knows the contents thereof, and that the same are true; and, as to the mat-

ters therein stated to be on the information and belief of the complainant, he has been so informed, and believes them to be true.

EDWARD G. MASON.

Subscribed and sworn to before me this 30th day of June, 1892.

WILLIAM NELSON JOHNSON,

[SEAL.] *Notary Public, Westchester Co.*

Certificate filed in N. Y. Co.

86 SCHEDULE "A."

Dec. 31, 1888.—The balance-sheet of the Florida Construction Company of this date shows as follows:

| | |
|---|---|
| J., T. & K. W. R'y Co. Dr. to F. C. Co. | $102,114 38 |
| " " " | 381,081 00 |
| Sanford & L. E. R. R. Co. " | 34,860 00 |
| De Land & St. J. R. R'y Co. Dr. " | 14,040 00 |
| Making a total indebtedness of the R'y Co. to the construction Co. of | $532,095 38 |

Oct. 1, 1889.—The balance-sheet of the F. C. Co. for this date shows:

| | |
|---|---|
| J., T. & K. W. R'y Co. Dr. to F. C. Co. | $500,113 43 |
| S. & L. E. R. R. Co. " " | 63,174 62 |
| Del. & St. J. R. R'y Co. " " | 16,621 20 |
| Making a total indebtedness of the R'y Co. to the Constr. Co. of | $579,909 25 |

Feb. 28, 1891.—The balance-sheet of construction Co. for this date shows as follows:

| | | |
|---|---|---|
| Amount due by Fla. Constr. Co. to J., T. & K. W. R'y Co. | | $841,284 87 |
| Less: | | |
| Due from R'y Co. to F. C. Co., J., T. & K. W. R'y Co. | $518,513 43 | |
| De L. & St. J. R'y Co. | 16,621 20 | |
| Sanford & Lake Eustis R. R. Co. | 57,428 62 | |
| A. C., St. J. & I. R. R'y Co. | 23,550 00 | |
| | | 616,113 25 |
| Making a net indebtedness due to the railway company of | | $225,171 62 |

87 July 1, 1891.—A trial balance of the Fla. Constr. Co.'s books of this date shows as follows:

| | | |
|---|---|---|
| Amount due from F. Co. Co. to R'y Co. | | $942,018 96 |
| Less: | | |
| Due from J., T. & K. W. R'y Co. to F. C. Co. | $518,513 43 | |
| De L. & St. J. I. R. R'y to F. C. Co. | 16,621 20 | |
| S. & L. E. R. R. Co. to F. C. Co. | 57,428 62 | |
| A. C., St. J. & I. R. R'y Co. to F. C. Co. | 23,550 00 | |
| | | 616,113 25 |
| Making a net indebtedness due to the railway company of | | $325,905 71 |

Sept. 30, 1891.—The balance-sheet of the Fla. Constr. Co. for this date shows an indebtedness of that Co. to the J., T. & K. W. R'y Co. of $821,042 23

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SCHEDULE "B."

*Statement Showing the Increase in the Floating Debt of the Jacksonville, Tampa and Key West Railway Company Exclusive of Equipment Bonds.*

Compiled from the balance-sheets of the said railway company of the dates given below:

| | | | |
|---|---|---|---|
| Dec. 31, 1888. Bills payable | | | $10,000 00 |
| June 30, 1890. Bills payable | $171,599 31 | | |
| R. H. Coleman | 50,000 00 | | |
| Overdraft at bank | 22,103 67 | | |
| | | 243,702 98 | |
| June 30, 1891. Bills payable | $1,758,349 75 | | |
| R. H. Coleman | 9,935 00 | | |
| J. H. Young | 19,500 00 | | |
| | | 1,787,784 75 | |

89

SCHEDULE "C."

*Statement Showing the Earnings of the Jacksonville, Tampa and Key West Railway Company, July 1, 1889, to April 30, 1892.*

Taken from the published annual report of the Jacksonville, Tampa and Key West Railway Company, year ending June 30, 1891:

| | |
|---|---|
| Net earnings for the year ending June 30, 1890 | $123,567 46 |
| Net earnings for the year ending June 30, 1891 | 257,338 79 |

Taken from the report of the general auditor of the Jacksonville, Tampa and Key West Railway Company for the 10 months ending April 30, 1892:

ters therein stated to be on the information and belief of the complainant, he has been so informed, and believes them to be true.

EDWARD G. MASON.

Subscribed and sworn to before me this 30th day of June, 1892.

WILLIAM NELSON JOHNSON,

[SEAL.] *Notary Public, Westchester Co.*

Certificate filed in N. Y. Co.

86 SCHEDULE "A."

Dec. 31, 1888.—The balance-sheet of the Florida Construction Company of this date shows as follows:

| | | |
|---|---|---|
| J., T. & K. W. R'y Co. Dr. to F. C. Co. | | $102,114 38 |
| " " " | | 381,081 00 |
| Sanford & L. E. R. R. Co. " | | 34,860 00 |
| De Land & St. J. R. R'y Co. Dr. " | | 14,040 00 |
| Making a total indebtedness of the R'y Co. to the construction Co. of | | $532,095 38 |

Oct. 1, 1889.—The balance-sheet of the F. C. Co. for this date shows:

| | | |
|---|---|---|
| J., T. & K. W. R'y Co. Dr. to F. C. Co. | | $500,113 43 |
| S. & L. E. R. R. Co. " " | | 63,174 62 |
| Del. & St. J. R. R'y Co. " " | | 16,621 20 |
| Making a total indebtedness of the R'y Co. to the Constr. Co. of | | $579,909 25 |

Feb. 28, 1891.—The balance-sheet of construction Co. for this date shows as follows:

| | | |
|---|---|---|
| Amount due by Fla. Constr. Co. to J., T. & K. W. R'y Co. | | $841,284 87 |
| Less: | | |
| Due from R'y Co. to F. C. Co., J., T. & K. W. R'y Co. | $518,513 43 | |
| De L. & St. J. R'y Co. | 16,621 20 | |
| Sanford & Lake Eustis R. R. Co. | 57,428 62 | |
| A. C., St. J. & I. R. R'y Co. | 23,550 00 | |
| | | 616,113 25 |
| Making a net indebtedness due to the railway company of | | $225,171 62 |

87 July 1, 1891.—A trial balance of the Fla. Constr. Co.'s books of this date shows as follows :

| | | |
|---|---|---|
| Amount due from F. Co. Co. to R'y Co. | | $942,018 96 |
| Less : | | |
| Due from J., T. & K. W. R'y Co. to F. C. Co. | $518,513 43 | |
| De L. & St. J. I. R. R'y to F. C. Co. | 16,621 20 | |
| S. & L. E. R. R. Co. to F. C. Co. | 57,428 62 | |
| A. C., St. J. & I. R. R'y Co. to F. C. Co. | 23,550 00 | |
| | | 616,113 25 |
| Making a net indebtedness due to the railway company of | | $325,905 71 |

Sept. 30, 1891.—The balance-sheet of the Fla. Constr. Co. for this date shows an indebtedness of that Co. to the J., T. & K. W. R'y Co. of $821,042 23

88 SCHEDULE "B."

*Statement Showing the Increase in the Floating Debt of the Jacksonville, Tampa and Key West Railway Company Exclusive of Equipment Bonds.*

Compiled from the balance-sheets of the said railway company of the dates given below :

| | | | |
|---|---|---|---|
| Dec. 31, 1888. | Bills payable | | $10,000 00 |
| June 30, 1890. | Bills payable | $171,599 31 | |
| | R. H. Coleman | 50,000 00 | |
| | Overdraft at bank | 22,103 67 | |
| | | | 243,702 98 |
| June 30, 1891. | Bills payable | $1,758,349 75 | |
| | R. H. Coleman | 9,935 00 | |
| | J. H. Young | 19,500 00 | |
| | | | 1,787,784 75 |

89 SCHEDULE "C."

*Statement Showing the Earnings of the Jacksonville, Tampa and Key West Railway Company, July 1, 1889, to April 30, 1892.*

Taken from the published annual report of the Jacksonville, Tampa and Key West Railway Company, year ending June 30, 1891 :

| | |
|---|---|
| Net earnings for the year ending June 30, 1890 | $123,567 46 |
| Net earnings for the year ending June 30, 1891 | 257,338 79 |

Taken from the report of the general auditor of the Jacksonville, Tampa and Key West Railway Company for the 10 months ending April 30, 1892 :

Net earnings for the ten months ending April 30, 1892 $306,821 78

[Endorsed:] In circuit court, United States, northern district of Florida, in equity. American Construction Company *vs.* The Jacksonville, Tampa and Key West Railway Company *et al.* Bill for injunction and relief. Filed July 6, 1892, at 2:30 p. m. P. Walter, clerk. Bisbee & Rinehart, complainant's solicitors.

90 Jacksonville, Tampa & Key West R'y Co. in account with the Florida Construction Company.

Dr. (1)

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1884. | | | | | | | |
| Aug. | Insurance | | | | | $630 00 | 1 |
| | Payments on account acs. pay. | | | | | 200 00 | 2 |
| Sept. | " | " | " | | | 165 48 | 3 |
| | " | " | " | | | 166 67 | 4 |
| Oct. | " | " | " | | | 100 00 | 5 |
| Nov. | " | " | S. B. H. & Co., Apl., May, Jun- | 416 31 | a | | |
| | " | " | S. B. H. & Co., July | 158 15 | b | | |
| | " | " | S. B. H. & Co., August | 53 64 | c | | |
| | " | " | S. B. H. & Co., Sept. | 43 11 | d | | |
| | | | | | | 671 20 | 6 |
| Nov. | " | " | May 5 | 83 69 | a | | |
| | " | " | " 28 | 30 00 | b | | |
| | | | June 3 | 2 64 | c | | |
| | | | July 16 | 43 32 | d | | |
| | | | April 9 | 55 25 | e | | |
| 91 | | | Sept. 11 | 30 50 | f | | |
| | | | Oct. 22 | 21 83 | g | | |
| | | | " 23 | 9 00 | h | | |
| | | | | | | 276 23 | 7 |
| Dec. | Payment on account acs. pay. | | | | | 413 80 | 8 |
| | " | " | G. M. salary Mar. | 166 66 | a | | |
| | | | May | 200 00 | b | | |
| | | | June | 100 00 | c | | |
| | | | July | 100 00 | d | | |
| | | | May | 104 75 | e | | |
| | | | | | | 671 41 | 9 |
| 1885. | | | | | | | |
| Feb'y | Payments on account F. P. Reid— | | | | | | |
| | | | M'ch 24, '84 | 274 77 | | | |
| | | | May 23 " | 94 80 | | | |
| | | | Aug. 7 " | 107 52 | | | |
| | | | Oct. 27 " | 338 54 | | | |
| | | | Dec. 6 " | 64 35 | | | |
| | | | Feb. 2, '85 | 15 00 | | | |
| | | | " 9 " | 172 17 | | | |
| | | | Int. on am'ts | 42 18 | | | |
| 92 | | | | | | 1,110 23 | 10 |
| May | Payments on account L. G. Tillotson Nov. to Mar. bills | | | | | $447 43 | 11 |
| | Forward | | | | | 4,852 45 | |

DR.

| | | | | | | |
|---|---|---|---|---|---|---|
| | Forward | | | | 4,852 45 | |
| 1885. | | | | | | |
| June | Payments on ac. sundry parties June 12 | 35 00 | | | | |
| | " " | 97 54 | | | | |
| | " 24 | 1,543 65 | | | | |
| | " 30 | 2 94 | | | | |
| | | | | | 1,679 13 | 12 |
| | " " not given | 200 00 | | | | |
| | | 600 00 | | | | |
| | | | | | 800 00 | 13 |
| | " " C. F. & K.'s bill | | | | 22 31 | 14 |
| July | " " July 21 | | | | 508 21 | 15 |
| Aug. | " " E. S. Greeley Co.— | | | | | |
| | May 11 | 174 77 | | | | |
| | " 29 | 176 56 | | | | |
| | April | 272 04 | | | | |
| | June | 96 04 | | | | |
| | July 15 | 7 75 | | | | |
| | | | | | 727 16 | 16 |
| 93 | Payments on ac. G. R. Dilkes & Co. insurance | | | | 8 50 | 17 |
| | " " acs. pay. | | | | 150 00 | 18 |
| Sept. | " " " | | | | 300 00 | 19 |
| Oct. | Payments on Lobdell & Co. | 555 00 | a | | | |
| | Ramapo Iron Co. | 762 50 | b | | | |
| | Mercantile Trust Co. | 330 00 | c | | | |
| | E. S. Greeley & Co. | 166 30 | d | | | |
| | | | | | 1,813 80 | 20 |
| Nov. | " " G. W. Campbell, Jr. | 58 67 | a | | | |
| | Washburn Car Wheel Co. | 1,320 00 | b | | | |
| | | | | | 1,378 67 | 21 |
| Dec. | " " acs. pay. 12-8 | 24 50 | a | | | |
| | 15 | 191 00 | b | | | |
| | 21 | 45 00 | c | | | |
| | | | | | 260 50 | 22 |
| 1886. | | | | | | |
| Jan'y | " " D. G. Ambler & Co., Jax. prop. | 9,095 00 | a | | | |
| | Fleming & Daniel | 201 00 | b | | | |
| | Rand, Avery & Co. | 619 88 | c | | | |
| | T. Campbell (law books) | 42 25 | d | | | |
| | | | | | 9,958 13 | 23 |
| 94 | | | | | | |
| Feb'y | Payments on cotton map | 20 00 | a | | | |
| | " " mounting | 14 75 | b | | | |
| | Jersey City iron works | 120 00 | c | | | |
| | New York World | 176 40 | d | | | |
| | Kilpatrick & Co. | 55 00 | e | | | |
| | O. B. Kinnie | 60 00 | f | | | |
| | | | | | $446 15 | 24 |
| March | " " advances by G. W. Bentley | | | | 1,364 00 | 25 |
| " | " " W. S. Sneeden, Ind. Riv. div. | | | | 2,025 00 | 26 |
| | Forward | | | | 26,294 01 | |

DR.

| | | | | | | |
|---|---|---|---|---|---|---|
| | Forward | | | | 26,294 01 | 27 |
| 1886. | | | | | | |
| March | Payments on ac. March 13 | 5 25 | a | | | |
| | 19 | 350 52 | b | | | |
| | 23 | 20 00 | c | | | |
| | " | 15 00 | d | | | |
| | | | | | 390 77 | 28 |
| | " " acs. pay. | | | | 11,085 31 | 29 |
| April | Advances cash by G. W. B. | | | | 10,000 00 | 30 |

| | | | | | |
|---|---|---|---|---|---|
| | Commissions collections | | | 292 60 | 31 |
| 95 | | | | | |
| | Acs. pay. Ind. Riv. div. | | | 52 00 | 32 |
| May | Steamer "Gov. Worth" (Rockledge) | | | 7,500 00 | 33 |
| | Advance to G. W. Bentley | | | 11,713 43 | 34 |
| | Acs. pay. | | | 1,548 94 | 35 |
| April | Advance on ac. G. W. B. | | | 29,500 00 | 36 |
| June | " " " | | | 7,752 47 | 37 |
| " | " E. S. Greeley & Co., bills | | | 1,628 20 | 38 |
| " | Payments acs. pay. | | | 1,434 21 | 39 |
| " | Collections for ties sold | | | 20 00 | 40 |
| " | A. B. Mason ac. salary | | | 3,000 00 | 41 |
| " | Advance payments by G. W. B., W. H. Fenta, C. C. Snyder | | | 268 75 | 42 |
| | | | | $112,480 69 | 43 |
| 1887. | | | | | |
| April | Am'ts paid M. R. Moran & others, | | | | |
| | d'f'ts, July 12, '86 | 10,000 00 | a | | |
| | Aug. 2, " | 5,000 00 | b | | |
| | 9, " | 2,600 00 | c | | |
| | G. W. B., Oct. 12, " | 5,000 00 | d | | |
| | 14, " | 10,000 00 | e | | |
| | 21, " | 7,500 00 | f | | |
| | Nov. 12, " | 15,000 00 | g | | |
| | Oct. 27, " | 3,000 00 | h | | |
| | | 7,500 00 | j | | |
| 96 | | 5,000 00 | k | | |
| | | 10,000 00 | l | | |
| | E. B. Powell | 5,000 00 | m | | |
| | Rent A. C. St. J. R., Jan. 14 & Feb. 28, '87 | 17,907 90 | n | | |
| | Feb. 24, '87, mileage | 1 86 | p | | |
| | | | | $103,509 76 | 44 |
| | Forward | | | 215,990 45 | |

Dr.

| | | | | | |
|---|---|---|---|---|---|
| | Forward | | | 215,990 45 | |
| 1886. | | | | | |
| July | Payments acs. pay. | 319 41 | a | | |
| Aug. | " " " | 10 56 | b | | |
| Dec. | " " " | 27 00 | c | | |
| 1887. | | | | | |
| Feb. | " " " | 20 00 | d | | |
| Mar. | " " " | 17,142 68 | e | | |
| | | | | 17,519 67 | 45 |
| Apr. | " E. S. Greeley & Co. | | | 1,866 62 | 46 |
| " | Am't cash from Boner's garden depot | | | 474 76 | 47 |
| Sept. | Insurance (Campbell) | | | 2,263 55 | 48 |
| | Loss on Mascotte | | | 3,000 00 | 49 |
| " | Bill, Lobdell & Co. | | | 3,792 62 | 50 |
| 97 | | | | | |
| Sept. | Cash, J. St. A. & H. | | | 4,000 00 | 51 |
| Dec. | Collections ac. construction | | | 1,250 55 | 52 |
| | Suspense (see journal, folio 244) | | | 36,900 00 | 53 |
| | | | | 287,058 22 | 54 |
| Oct. 10. | Cash, S. F. & W. terminals | 8,732 25 | a | | |
| " 21. | D'ft | 5,000 00 | b | | |
| Nov. 7. | Plant Invest. Co. St. Guaree | 5,000 00 | c | | |
| 10. | Washburn Car Wheel Co. | 1,340 00 | d | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1888. | | | | | | | |
| May | 17. | H. Fink & Son | | 200 00 | e | | |
| Jan. | 6. | Plant Inv. Co. Str. Guaree | | 1,666 66 | f | | |
| Oct. 14, '87. | | Jas. Rees | | 1,000 00 | g | | |
| 1888. | | | | | | 22,938 91 | 55 |
| Aug. | | D'fts | | 12,000 00 | a | | |
| Sep. | 24. | " | | 5,000 00 | b | | |
| | | " | | 5,000 00 | c | | |
| " | 17. | " | | 10,000 00 | d | | |
| Oct. | 15. | " | | 10,000 00 | e | | |
| | 22. | " | | 10,000 00 | f | | |
| | 24. | " | | 5,000 00 | g | | |
| Nov. | 16. | " | | 5,000 00 | h | | |
| 98 | | | | | | | |
| Oct. | 13. | Payments | | 75 00 | j | | |
| | 24. | " | | 100 00 | k | | |
| | 29. | " | | 25 00 | l | | |
| Nov. | 7. | " | | 15 00 | m | | |
| June | 4. | " | | 5,053 32 | n | | |
| | 16. | " | | 252 67 | p | | |
| | | " | | 2 90 | r | | |
| Sep. | 25. | " | | 100 00 | s | | |
| Oct. | 17. | " | | 2,500 00 | t | | |
| Nov. | 30. | " | | 42 50 | v | | |
| Dec. | 5. | " | | 110 00 | w | | |
| | 7. | " | | 45 00 | x | | |
| | 27. | " | | 3,075 17 | y | | |
| | | | | | | $73,396 56 | 56 |
| | | Forward | | | | 383,393 69 | |

DR.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | Forward | | | | 383,393 69 | |
| 1888. | | | | | | | |
| Oct. | 29. | D'fts | | | | 10,000 00 | 57 |
| 1887. | | | | | | | |
| Dec. | 31. | Bal. ac. E. B. Powell | | | | 237 03 | 58 |
| 99 | | | | | | | |
| 1888. | | | | | | | |
| Dec. | | Bill, Burnham, P. Wms. & Co. equipt. | | 17,400 00 | a | | |
| | | Int. | | 2,851 36 | b | | |
| | | | | | | 20,251 36 | 59 |
| " | | Am't paid M. T. Co., certif. bonds S. & L. E. | | | | 287 00 | 60 |
| " | | Int. on bonds A. C., St. J. & H. R. R. | | | | 26,010 00 | 61 |
| 1889. | | | | | | | |
| Sep. | | Payments to E. J. Coach | | 2,366 43 | a | | |
| | | " C. L. Norton, guide book | | 1,225 19 | b | | |
| May | 2. | Plant I. Co. Ins. Chatta. | | 225 00 | c | | |
| Sep. | 30. | " 2-3 P'Line guarantee | | 2,833 33 | d | | |
| " | | G. P. Healy settlement | | 2,242 50 | e | | |
| Aug. | 2. | P. Invest. Co. | | 3,949 71 | f | | |
| Jul. | 20. | Exs. Fla., Mason Young | | 445 74 | g | | |
| Jan. | 14. | Bills pay., E. S. Greeley & Co. | | 2,500 00 | h | | |
| Sep. | 28. | B. F. Upton | | 177 40 | j | | |
| Jul. | 10. | J. G. Blaine—F. W. Devoe & Co. | | 200 00 | k | | |
| " | 2. | G. Campbell, insurance | | 3,630 63 | l | | |
| Sep. | 2. | Am. B'k Note Co., G. T. bonds | | 126 15 | m | | |
| Aug. | 1. | Am. L. & T. Co., Col. trust | | 46,000 00 | n | | |
| May | 3. | " trustee serv. | | 1,500 00 | p | | |
| | | | | | | 67,422 08 | 62 |

100 *Interest and Discount.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| June | 29. | Discounts on $75,000, dics. | 1,575 00 | | | | |
| | | Comm. | 187 50 | | | | |
| | | | | 1,762 50 | a | | |
| July | 27. | $25,000, disc. | 529 17 | | | | |
| | | Comm. | 62 50 | | | | |
| | | | | 591 67 | b | | |
| Aug. | 1. | $25,000, disc. | 510 00 | | | | |
| | | Comm. | 62 50 | | | | |
| | | | | 572 50 | d | | |
| Sept. | 30. | $25,000, disc. | | 525 00 | d | | |
| | | | | | | $3,451 67 | 63 |
| Aug. | 1. | Option, 1st pay't, J. S. Smith | 54,206 00 | | | | |
| " | 2. | " " " | 2,044 00 | | | | |
| | | | | 56,250 00 | | | |
| | | | | | | 56,250 00 | 64 |
| 101 | | | | | | | |
| | | Fla. So. R'y: | | | | | |
| Jan. | 21. | Contract ac. J. W. Chandler | | 5,250 00 | a | | |
| June | 17. | R. C. Rathborne & Co. | | 2,541 81 | b | | |
| Aug. | 2. | American L. & T. Co. | | 3,192 50 | c | | |
| | | | | | | 10,984 31 | 65 |
| | | Indian River S. B. Co.: | | | | | |
| Jan. | 2. | Pusey & Jones | | 1,494 64 | a | | |
| | 3. | Seaboard Nat'l bank | | 296 43 | b | | |
| | 4. | D'ft S. A. Bravo | | 52 15 | c | | |
| | 20. | J. T. Smith | | 335 00 | d | | |
| Feb. | 11. | J. & H., ins. str. St. Lucie | | 496 97 | e | | |
| | 19. | G. & W., " " Exs. | | 7 75 | f | | |
| Sep. | 2. | G. W. C., Jr., & Co., ins. | | 187 50 | g | | |
| June | 11. | D'ft J. G. K. | | 1,500 00 | h | | |
| July | 12. | " " | | 1,900 00 | j | | |
| | | | | | | 6,270 34 | 66 |
| | | Forward | | | | 584,557 48 | |

Dr.

| | | | | | |
|---|---|---|---|---|---|
| 1889. | | | | | |
| Nov. | 8. | "Am't paid for that Co.:" | | | |
| Oct. | 9. | Perry Holland | 60 00 | a | |
| | 1. | Car-trust ac., principal | 2,500 00 | b | |
| 102 | | interest | 1,125 00 | c | |
| | 3. | Note, Chat. & int. | 25,525 00 | d | |
| | 4. | " " Aug. 3, '89 | 10,000 00 | e | |
| | 5. | " " " 31, '89 | 10,000 00 | f | |
| | 7. | Bal. Chat. & int. | 5,008 31 | g | |
| | 18. | D'ft J. G. K. | 2,200 00 | h | |
| | 22. | J. & S., ex's on d'ft in pay't note | 6 46 | i | |
| | 29. | G. P. Healy | 550 00 | j | |
| | 30. | Drexel, int. & comm. on $75,000 | 1,294 00 | k | |
| Nov. | 2. | Car-trust bonds | 175 00 | l | |
| | 4. | Plant. Invest. Co. | 750 00 | m | |
| | 8. | A. B. Mason | 150 00 | n | |
| Oct. | 10. | W. E. Arnold | 100 00 | p | |
| Nov. | 7. | Note, Lebanon Trust Co., $50,000 | 48,875 00 | q | |
| | 12. | G. D. Rise, bal. loan, J. T. K. | 1,125 00 | r | |
| | 24. | Disc. on $20,000, 4 mo., comm. | 447 77 | s | |
| | 25. | " $30,000, " | 620 00 | t | |
| Oct. | 21. | D'ft J. C. K. | 2,800 00 | v | |
| | 4. | Disc. on $10,000 | 56 67 | w | |
| | 4. | " " | 56 67 | x | |
| | 7. | " " | 56 67 | y | |
| | 15. | " " | 56 67 | z | |
| Nov. | 7. | " $50,000 | 1,125 00 | aa | |
| | 19. | " 25,000 | 578 66 | ab | |

103

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | 29. | Disc. on 5,000 | | 154 17 | ac | | | |
| | 30. | " 10,000 | | 206 67 | ad | | | |
| Dec. | 2. | " 5,000 | | 76 67 | af | | | |
| Nov. | 29. | " 12,500 | | 258 33 | ag | | | |
| Oct. | 1. | " 10,000 | | 56 66 | ah | | | |
| | | | | | | 116,625 | 33 | 67 |
| Dec. | | Two notes, Pusey & Jones, 6,250 ea. | | | | 12,500 | 00 | 68 |
| | | Int. to Jas. Young | | | | 12 | 50 | 69 |
| | | Int. on note, Jan. 4, '90 | | | | 391 | 67 | 70 |
| | | Disc. " Dec. 6, '89, $5,000 | | | | 103 | 34 | 71 |
| 1890. | | | | | | | | |
| Jan. | | Paid salary, J. R. Parrott | 250 00 | a | | | | |
| | | Post, Martin & Co., C. T. notes | 614 20 | b | | | | |
| | | Mason Young, loan to Da Costa | 2,500 00 | c | | | | |
| | | | | | | 3,364 | 20 | 72 |
| Feb. | | Cash on ac. | | | | 7,000 | 00 | 73 |
| Mar. | | " " | | | | 500 | 00 | 74 |
| Apr. | | Da Costa, loan by Mason Young | | | | 2,500 | 00 | 75 |
| | | Forward | | | | 727,554 | 52 | |

104 DR.

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | Forward | | | | $727,554 | 52 | |
| 1890. | | | | | | | | |
| May | | Cash on ac. | | | | 30,000 | 00 | 76 |
| June | | " " | | | | 2,500 | 00 | 77 |
| | | " " | | | | 2,000 | 00 | 78 |
| | | " " | | | | 25,000 | 00 | 79 |
| | | " " | | | | 15,000 | 00 | 80 |
| | | " " | | | | 10,000 | 00 | 81 |
| | | M. C. Blain, deposit (refunded by Dr.) | | | | 50 | 00 | 82 |
| | | E. J. & Co., notary fee | | | | 31 | 50 | 83 |
| | | J. L. Williams, cost on map | | | | 40 | 00 | 84 |
| | | Carnegie, P. & Co. (car plates) | | | | 109 | 73 | 85 |
| | | Cash on ac. | | | | 750 | 00 | 86 |
| Jan. | 2. | Disc. on note, Dec. 31 | 103 33 | a | | | | |
| | 4. | " " 27, '89, Drexel | 1,033 33 | b | | | | |
| | 23. | " Jan. 22, '90 | 233 33 | c | | | | |
| | 28. | " " 27, '90 | 579 17 | d | | | | |
| | | | | | | 1,949 | 16 | 87 |
| Oct. | | Am't payments ac. J. & L. W. R'y: | | | | | | |
| | | July 9, '89, d'ft J. G. Kennedy | 2,000 00 | a | | | | |
| | | Aug. 8, '89, d'ft F. S. Hodges | 2,000 00 | b | | | | |
| | | Sep. 18, '89, d'ft F. S. Hodges | 1,407 85 | c | | | | |
| | | | | | | 5,407 | 85 | 88 |

105

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Oct. | | Am't payments ac. I. R. S. B. Co., Str. "Lucie": | | | | | | |
| | | Aug. 29, Pusey & Jones | 2,400 00 | a | | | | |
| | | Oct. 5, " | 4,800 00 | b | | | | |
| | | Nov. 2, " | 4,800 00 | c | | | | |
| | | Dec. 27, " | 12,000 00 | d | | | | |
| | | Nov. 30, F. A. Sinclair | 69 48 | e | | | | |
| | | Dec. 7, Wakefield & Co. | 36 00 | f | | | | |
| | | " 21, " | 46 80 | g | | | | |
| | | " 18, F. S. & J. D. Negus | 62 00 | h | | | | |
| | | " 21, T. A. Hall | 293 10 | i | | | | |
| | | " 21, P. Strobel & Co. | 92 40 | j | | | | |
| | | " 13, T. A. Hall | 449 97 | k | | | | |
| | | " 31, powder-maker | 227 87 | l | | | | |
| | | | | | | 25,277 | 62 | 89 |

| | | | | | |
|---|---|---|---|---|---|
| " | M. C. Blain, remittance | | | 450 00 | 90 |
| " | Interest & discount, J., T. & K. W. ac. | | | 2,515 67 | 91 |
| " | Note Mar. 29, G. D. Rise, cash'r (4 mos.) Paid U. S. national bank. | | | 12,500 00 | 92 |
| " | Note Nov. 18, '89, favor Bank of N. A. | | | 25,000 00 | 93 |
| | Forward | | | 886,136 05 | |

106 DR.

| | | | | | |
|---|---|---|---|---|---|
| | Forward | | | $886,136 05 | |
| 1890. | | | | | |
| Oct. | Paid loan U. S. N. bank, Oct. 14, '90 | | | 1,000 00 | 94 |
| Dec. | Int. p'd on note $169,000 favor Penn. M. L. Ins. Co. | | | 6,760 00 | 95 |
| | Int. | 5,070 00 | a | | |
| | Comm. | 1,690 00 | b | | |
| " | Pay't int. coupon ac., due Jan. 2, '91, J., T. & K. W. | | | 30,000 00 | 96 |
| " | Cash bal. Chatham Nat. b'k transferred | | | 1,162 39 | 97 |
| 1891. | | | | | |
| March | Net proceeds Str. "Uncle Sam," June 25, '91 | | | 645 81 | 98 |
| " | Taxes pf. on East Coast Lines lands, refunded: | | | | |
| | March 17, '90 | 792 52 | a | | |
| | Dec. 15, '90 | 17 86 | b | | |
| | | | | 810 38 | 99 |
| " | Proceeds from sale of parlor cars "Palatka" and "Sanford" | | | 14,840 00 | 100 |
| 1890. | | | | | |
| June | Am't payments ac. J., T. & K. W. R'y: | | | | |
| | Cash advanced | | | 5,864 32 | 101 |
| 1891. | | | | | |
| July 1. | To balance | | | 946,925 55 | 102 |
| | | | | $1,894,144 50 | |

107 Jacksonville, Tampa & Key West R'y Co. in account with the Florida Construction Company.

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|---|---|---|---|---|---|
| 1884. | | | | | |
| Aug. | By cash G. W. B. | | | $1,000 00 | 1 |
| Sep. 30. | Am't vo. # 52, refunded to G. W. B. | | | 600 00 | 2 |
| 1885. | | | | | |
| Nov. | " # 14, " " | | | 176 56 | 3 |
| 1886. | | | | | |
| Jan. | Am't vo., F. & D., p'd by G. W. B., chg. refunded by this entry | | | 201 00 | 4 |
| Mar. | Am't, cash given G. W. B. from r'y receipts | | | 5,000 00 | 5 |
| " | " advances to " Mar., '84, to Mar., '86 | | | 25,211 75 | 6 |
| " | Am't, vouchers paid for ac., F. Const. Co.: | | | | |
| | F. & D. | 6 75 | a | | |
| | S. B. Hubbard & Co. | 64 55 | b | | |
| | G. A. Foster & Co. | 16 35 | c | | |
| 108 | | | | | |
| | E. S. Greeley & Co. | 77 13 | d | | |
| | A. B. Mason | 17 03 | e | | |
| | J. G. Blain | 153 20 | f | | |
| | | | | $335 01 | 7 |
| Apr. | Paid vous. ac. Constr. Co., April, 1886: | | | | |
| | Acs. pay | 5,305 41 | a | | |
| | Str. "Gov. Worth" | 2,500 00 | b | | |
| | T. C. Butler | 114 12 | c | | |
| | F. H. Brown | 2,675 00 | d | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| | M. W. Mock | | 130 00 | e | | |
| | N. M. Alexander | | 500 00 | f | | |
| | D. O. Balcon | | 500 00 | g | | |
| | C. H. Norris | | 279 97 | h | | |
| | | | | | 12,034 50 | 8 |
| May | Paid ac. vouchers F. C. C. on ac. | | | | 4,454 01 | 9 |
| " | T. H. Brown | 1,713 72 | | a | | |
| | Jno. Stewart | 500 00 | | b | | |
| | A. G. Norris | 194 79 | | c | | |
| | | | | | 2,408 51 | 10 |
| 109 | | | | | | |
| June | Paid ac. vouchers, F. C. Co.: | | | | | |
| | T. H. Brown | 3,134 20 | | a | | |
| | Jno. Stewart | 1,000 00 | | b | | |
| | Blain Bros. | 550 00 | | c | | |
| | Davis & Webster | 795 07 | | d | | |
| | Acs. pay | 4,041 01 | | e | | |
| | | | | | 9,520 28 | 11 |
| May | Paid in April salary G. W. B., Jan., Feb., and Mar. | | | | 1,589 15 | 12 |
| June | Paid vou. on ac. June: | | | | | |
| | # 82 | 3,751 01 | | a | | |
| | # 83 | 284 49 | | b | | |
| | # 84 | 591 31 | | c | | |
| | | | | | 4,626 81 | 13 |
| | Forward | | | | 67,157 58 | |

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| | | | | | | |
|---|---|---|---|---|---|---|
| | Forward | | | | 67,157 58 | |
| 1886. | | | | | | |
| June. | Paid vous. on ac., June, 1886 | | | | 450 16 | 14 |
| " | (Cross-entry) | | | | 713 43 | 15 |
| " | Bal. salary G. W. B., transferred to r'w'y | | | | 1,238 19 | 16 |
| | | | | | 69,559 36 | 17 |
| 110 | | | | | | |
| 1887. | | | | | | |
| Apr. | Paid vous. July, '86, June, # 86, # 64 | | 889 23 | a | | |
| | July, # 1 | | 15 41 | b | | |
| | # 2 | | 12 50 | c | | |
| | # 3 | | 21 90 | d | | |
| | # 4 | | 20 00 | e | | |
| | # 5 | | 15 | f | | |
| | # 6 | | 8 00 | g | | |
| | on ac. # 16 | | 8 25 | h | | |
| | # 14 | | 4 57 | j | | |
| | # 45 | | 142 20 | k | | |
| | # 49 | | 199 73 | l | | |
| | # 50 | | 108 00 | m | | |
| | August, # 9 | | 5 40 | n | | |
| | # 10 | | 51 00 | p | | |
| | # 11 | | 100 00 | q | | |
| | July, # 48 | | 134 10 | r | | |
| | June, # 58 | | 41 40 | s | | |
| | # 57 | | 15 30 | t | | |
| | # 73 | | 507 20 | v | | |
| | # 72 | | 168 66 | w | | |
| | # 54 | | 189 60 | x | | |
| | | | | | $3,459 35 | 18 |

111

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Apr. | Payments, vouchers in Aug., on ac. | | | | | 2,695 24 | 19 |
| " | " " | Oct., '86, on ac. | | | | 4,754 13 | 20 |
| " | " " | Sep. " " | | | | 3,597 48 | 21 |
| " | " " | Nov., " " | | | | 3,603 44 | 22 |
| " | " " | Dec., " " | | | | 7,510 99 | 23 |
| " | " " | Jan., '87, " | | | | 5,379 57 | 24 |
| " | " " | Feb., " " | | | | 2,000 44 | 25 |
| " | " " | Mar., " " | | | | 1,690 75 | 26 |
| " | " " | Apr., " " | | | | 117 59 | 27 |
| " | " on ac.: | | | | | | |
| | M. S. Carter & Co., | Jul-, '86 | | 550 40 | a | | |
| | Concessions Van Fleet, | Mar., '87 | | 3,666 67 | b | | |
| | " Parllow | | | 6,666 66 | c | | |
| | Davis & Webster, | Sep., '86 | | 750 00 | d | | |
| | " | Oct., " | | 1,326 48 | e | | |
| | H. M. Flagler, | Sep., " | | 60 95 | f | | |
| | A. M. & S., | Dec., " | | 1,030 00 | g | | |
| | B. P. W. & Co., | Feb., '87 | | 535 50 | h | | |
| | B. W. & Co., | " | | 21,163 67 | j | | |
| | D. G. A., | Mar., " | | 10,000 00 | k | | |
| | C. C. B., | " " | | 10,000 00 | l | | |
| | " | " " | | 6,900 00 | m | | |
| | " | Apr. 22 | | 10,000 00 | n | | |
| | C. C. D. (Drexel) | " " | | 1,627 50 | o | | |
| 112 | Nason Bros. | | | 3,415 82 | p | | |
| | Curry & Bruton, | Nov., '86 | | 87 72 | q | | |
| | | | | | | $77,781 37 | 28 |
| | Forward | | | | | 182,248 71 | |

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| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Forward | | | | | 182,248 71 | |
| 1887. | | | | | | | |
| Apr. | Balance Mason Bros., Apr., '87 | | | | | 2 70 | 29 |
| " | Voucher, # 17 | | | | | 754 95 | 30 |
| " | Vouchers on ac. | | | | | 38,337 03 | 31 |
| " | " | | | | | 15,187 53 | 32 |
| Sep. | Payments in March, 1887 | | | | | 98 72 | 33 |
| | " G. F. & D. Co. | | | | | 714 91 | 34 |
| Dec. | " # 1 | | | | | 4,531 48 | 35 |
| " | Suspense transfer for adjustment | | | | | 4,169 61 | 36 |
| Apr. | Loans | | | | | 37,001 86 | 37 |
| " | Fr't bills Palatka (ac. Blain Bros.) | | | | | 551 14 | 38 |
| " | Voucher, # 62, June | | | | | 268 75 | 39 |
| | | | | | | 283,867 39 | 40 |

113

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|---|---|---|---|---|---|---|---|
| 1888. | | | | | | | |
| Feb. | 9. | Cash d'ft | | 3,456 61 | a | | |
| | 18. | " | | 1,361 20 | b | | |
| | 21. | " | | 2,690 88 | c | | |
| | 23. | " | | 1,512 45 | d | | |
| Mar. | 1. | " | | 12,500 00 | e | | |
| | | | | | | 21,521 14 | 41 |
| May | Int. collected from M. Car Co.: | | | | | | |
| | Nov. 3, '87 | | | 420 00 | a | | |
| | May 1, '88 | | | 420 00 | b | | |
| | | | | | | 840 00 | 42 |
| Dec. | Cash on ac., Aug., 25 | | | 11,511 79 | a | | |
| | Dec., 6 | | | 275 00 | b | | |
| | | | | | | 11,786 79 | 43 |
| Dec. | Refund of loan to S. V. White ac., St. J. & H. | | | | | 6,049 38 | 44 |
| " | Am't received from Monarch Car Co. | | | | | 14,000 00 | 45 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 1889. | | | | | | |
| Sept. | | Am't ch'd Oct., '86, refunded | | | 5,000 00 | 46 |
| Jan. | | Advances returned | | | 5,000 00 | 47 |
| Feb. | 2. | " " | | | 5,000 00 | 48 |
| 114 | | | | | | |
| Feb. | 4. | Advances returned | | | $2,500 00 | 49 |
| " | 12. | " " | | | 10,000 00 | 50 |
| " | 28. | " " | | | 20,000 00 | 51 |
| June | 29. | Note | | | 75,000 00 | 52 |
| | | Forward | | | 460,564 70 | |

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|---|---|---|---|---|---|---|
| | | Forward | | | 460,564 70 | |
| 1889. | | | | | | |
| July | 27. | Note | | | 25,000 00 | 53 |
| Aug. | 1. | " | | | 25,000 00 | 54 |
| " | 1. | " | | | 50,000 00 | 55 |
| Sep. | 30. | " | | | 25,000 00 | 56 |
| Feb. | 16. | Refund | | | 2,500 00 | 57 |
| Mar. | 6. | Jerry Campbell | | | 40 00 | 58 |
| " | " | Advances, ac. I. R. S. B. Co. | | | 848 88 | 59 |
| May | 14. | W. S. Estey ac. T. bonds | | | 100 00 | 60 |
| " | 8. | Mail F. S. R'w'y | 5,439 60 | a | | |
| Aug. | 1. | " " | 5,439 60 | b | | |
| | | | | | 10,879 20 | 61 |
| | 3. | Refund Fla. Commercial Co. ac. tax paid | | | 4,000 00 | 62 |
| " | 5. | " " " | | | 1,500 00 | 63 |
| 115 | | | | | | |
| Jul. | 27. | F. W. Devoe & Co., refund | | | 40 87 | 64 |
| Aug. | 22. | Loss box car, # 54 | | | 150 00 | 65 |
| " | " | C. K. M. B. & Co. to exem. G. T. bonds | | | 117 50 | 66 |
| " | 24. | Loss K. C. M. & B. car, # 13306 | | | 576 93 | 67 |
| Mar. | 4. | Cash | | | 12,000 00 | 68 |
| Nov. | | Amount of notes, "Face:" | | | | |
| | | Note, Oct. 4 | 10,000 00 | a | | |
| | | " " 5 | 10,000 00 | b | | |
| | | " " 7 | 10,000 00 | c | | |
| | | " " 15 | 10,000 00 | d | | |
| | | 2 mo., Nov. 2, Nov. 4 | 25,000 00 | e | | |
| | | Disc., R. H. G., Nov. 7 | 50,000 00 | f | | |
| | | 4 mo. \| Nov. 18, " 19 | 25,000 00 | g | | |
| | | " 29 | 5,000 00 | h | | |
| | | 4 mo. \| Nov. 27, " 29 | 12,000 00 | j | | |
| | | 4 mo. " 30 | 10,000 00 | k | | |
| | | Dec. 2 | 5,000 00 | l | | |
| | | 30 days, Sep. 30 | 10,000 00 | m | | |
| | | | | | 182,500 00 | 69 |
| | | Mail service | 14,394 48 | a | | |
| | | | 6,533 73 | f | | |
| | | | | | 20,928 21 | 70 |
| | | Forward | | | 821,747 29 | |

116

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| | | | | | | |
|---|---|---|---|---|---|---|
| | | Forward | | | $821,747 29 | |
| 1889. | | | | | | |
| Nov. | | Greenwich Ins. Co. | | | 200 00 | 71 |
| | | Plant Invest. Co. | | | 23 00 | 72 |
| Dec. | | Proceeds of note, Dec. 6, '89 | 5,000 00 | a | | |
| | | Cash | 3,000 00 | b | | |
| | | Mail earnings | 1,753 20 | c | | |
| | | Cash (p'd U. S. nat. bank note), $50,000 | 48,000 00 | d | | |
| | | | | | 57,753 20 | 73 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 1890. | | | | | | |
| Jan. | | Proceeds of note, Dec. 31, 4 mo. | 5,000 00 | a | | |
| | | Balance from Drexel Co. | 2,000 00 | b | | |
| " | 16. | Car-trust note refund, Jan. 10 | 614 20 | c | | |
| | 8. | Cash | 4,896 67 | d | | |
| | 23. | Proceeds of note, Jan. 22 | 10,000 00 | e | | |
| | 28. | " " " 27 | 25,000 00 | f | | |
| | | | | | 47,510 87 | 74 |
| | | Mail earnings col's: | | | | |
| | | De Land & St. John's | 49 07 | a | | |
| | | J., T. K. W. | 5,716 81 | b | | |
| | | " | 5,811 72 | c | | |
| | | F. S. R'y | 3,592 62 | d | | |
| 117 | | L. R. S. B. Co. | $1,987 50 | e | | |
| | | F. S. R'y | 48 75 | f | | |
| | | S. & L. E. | 332 89 | g | | |
| | | | | | 17,539 36 | 75 |
| Feb. | 1. | Cash | 3,000 00 | a | | |
| | 11. | " | 9,383 00 | b | | |
| | 27. | Am't advanced Oct. 10 to Arnold & Holland refunded | 160 00 | c | | |
| Jan. | 24. | Proceeds of note to Chat. bank | 25,000 00 | d | | |
| | | | | | 37,543 00 | 76 |
| Mar. | 17. | Am't East Coast Lines ac. tax paid | 792 52 | a | | |
| Apr. | 1. | " " " | 185 73 | b | | |
| Mar. | 26. | Mail, S. F. R'y | 1,845 93 | c | | |
| | | J., T. & K. W. R'y | 774 02 | d | | |
| | | | | | 3,598 25 | 77 |
| Sep. | 30. | Apr. 16, cash | 1,500 00 | a | | |
| | | 19, " | 6,000 00 | b | | |
| | | 22, " | 500 00 | c | | |
| | | May 14, " | 1,000 00 | d | | |
| | | 22, " | 1,500 00 | e | | |
| | | June 3, " | 500 00 | f | | |
| | | 30, " | 5,500 00 | g | | |
| 118 | | July 6, am't from F. Comm. Co. 5, 3, '90, refunded | 4,453 75 | h | | |
| | | Aug. 1, cash | 12,500 00 | j | | |
| | | " " | 25,000 00 | k | | |
| | | July 9, " | 500 00 | l | | |
| | | Apr. 22, " | 2,000 00 | m | | |
| | | May 5, " | 27,500 00 | n | | |
| | | June 23, " | 25,000 00 | p | | |
| | | July 2, " | 25,000 00 | q | | |
| | | | | | 138,453 75 | 78 |
| | | Forward | | | 1,124,368 72 | |

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|---|---|---|---|---|---|---|
| | | Forward | | | 1,124,368 72 | |
| 1890. | | | | | | |
| Oct. | | Payments ac. construction Co.: | | | | |
| | | Feb. 10, note B. P. W. & Co. | 1,532 53 | a | | |
| | | Mar. 30, " Bank of N. A., Nov. 21 | 25,000 00 | b | | |
| | | " " " " 18 | 25,000 00 | c | | |
| | | June 3, Drexel & Co., Apr. 1 | 25,000 00 | d | | |
| | | " " " | 12,500 00 | e | | |
| | | July 28, Farmers' & M. N. B., Mar. 24. | 25,000 00 | f | | |
| | | Apr. 4, Nat'l Bank cols., May 1 | 25,000 00 | g | | |
| | | Jan. 9, Wilburn's interest in contract | 450 00 | h | | |
| 119 | | | | | | |
| Oct. | | July 11, salary, J. W. Candler | 500 00 | j | | |
| | | Oct. 2, " " | 1,100 00 | k | | |
| | | Sep. 30, rent of office | 450 00 | l | | |
| | | " 25, disc. note by Jas. Corcoran | 500 00 | m | | |
| | | | | | 142,032 53 | 79 |

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|---|---|---|---|---|---|
| " | Payments ac. construction Co.: | | | | |
| | July 17, '90, note Penn. 1. G. Co., dated April 24 | 50,000 00 | a | | |
| | July 17, '90, note Penn. Co., June 11 | 170,000 00 | b | | |
| | | | | 220,000 00 | 80 |
| " | Bal. land sales ac., J., T. & K. W. transferred | | | 16,515 37 | 81 |
| " | Advances on con. ac. | | | 950 00 | 82 |
| | Apr. 28, ex's G. S. Morrison ex. bridge | 500 00 | a | | |
| | July 7, loan M. C. Blain ac., E. T. Cont | 450 00 | b | | |
| " | Advances to C. R. Morris ac. Spring Garden depot improperly ch'g'd off to J., T. & K. W., Apr. '87: | | | | |
| | Apr., 1886 | 279 97 | a | | |
| 120 | May, " | 194 79 | b | | |
| | | | | 474 76 | 83 |
| Oct. | Proceeds of sale note Fla. Comm. Co. $5,000 for taxes p'd by J., T. & K. W. for them in '88 | | | 4,322 04 | 84 |
| " | Loan to C. W. Da Costa 1, 15, '90, improperly ch'g'd to J., T. & K. W. in Jan. $2,500; Ap., $2,500 | | | 5,000 00 | 85 |
| " | Advances to Mason Young June 4, '90, ch'g'd improperly to J., T. & K. W. | | | 2,500 00 | 86 |
| Sept. | Note con. Co. to Drexel & Co. assumed by R'y Co. | | | 12,500 00 | 87 |
| Oct. | Refund May 25 S. V. White loan ac. Palatka bridge | | | 23,000 00 | 88 |
| Oct. | Paid 8, 4, '90, con. Co. note favor Bank of N. A. | | | 25,000 00 | 89 |
| " | " con. Co. note favor U. S. Nat. b'k due 6, 2, '90 | | | 12,500 00 | 90 |
| " | " " " " 9, 10, '90 | | | 10,000 00 | 91 |
| " | Loan, Oct. 15, '90 | | | 1,000 00 | 92 |
| | Forward | | | 1,600,163 42 | |

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|---|---|---|---|---|---|
| | Forward | | | 1,600,163 42 | |
| 1890. | | | | | |
| Oct. | Loan Oct. 17, '90 | | | 500 00 | 93 |
| | " 20, | | | 600 00 | 94 |
| Dec. | Loan Dec. 29, '90 | | | 5,500 00 | 95 |
| " | " 31, | | | 3,500 00 | 96 |
| " | " " (R. H. C. deposit, coupon ac.) | | | 40,000 00 | 97 |
| 121 | | | | | |
| Dec. | Notes assumed by R'y Co. upon renewal: | | | | |
| | dated 10-6-90, favor Chatham N. bank | 25,000 00 | a | | |
| | dated 10-31-90, favor Drexel & Co. | 25,000 00 | b | | |
| | dated 11-6-90, favor Drexel & Co. | 25,000 00 | c | | |
| | " 11-20-90, " Chatham N. bank | 40,000 00 | d | | |
| | | | | 115,000 00 | 98 |
| " | Paid on Co. Co.: | | | | |
| | Bill H. K. Brewer, stationery | | | 53 05 | 99 |
| " | Paid on Co. Co. ac.: | | | | |
| | Bill Mutual District Messenger Co. Nov | | | 19 51 | 100 |
| 1891. | | | | | |
| March | Payments on ac.: | | | | |
| | Oct. 13-22, prop. exs., N. Y., J. E. S. | 50 00 | a | | |
| | Dec., prop. exs., N. Y., J. E. S. | 16 84 | b | | |
| | Feb. salary, book-keeper, F. M. G. | 75 00 | c | | |
| | Mar. " " | 75 00 | d | | |
| | | | | 216 84 | 101 |

| | | | | | |
|---|---|---|---|---|---|
| March | Payments to R. H. C. bal. on his advances, ac. Mar. 7, '91 | | | 4,586 68 | 102 |
| " | Partial payment note Drexel & Co., dated 3-4-90, due May 6, '90, for $25,000. Bal. renewed | | | 12,500 00 | 103 |
| " | Advanced March 7 | | | 200 00 | 104 |
| 122 | | | | | |
| April | Loan on ac. April 21 | | | $250 00 | 105 |
| June | Payments on ac. St. J. & I. R'y: | | | | |
| | August 1, '89 | 54,206 00 | a | | |
| | " 2, '89 | 2,044 00 | b | | |
| | | | | 56,250 00 | 106 |
| | Forward | | | 1,839,339 50 | |
| | Cr. | | | | |
| | Forward | | | 1,839,339 50 | |
| 1891. | | | | | |
| June | Payments on ac. coupon bonds east coast lines: | | | | |
| | June 30, '90, St. A. & H. R. R'y 2,700 | | | | |
| | Dec. 2,700 | 5,400 00 | a | | |
| | Apr. 30, '90, St. J. & H. R. R'y 4,035 | | | | |
| | Oct. 31, '91, St. J. & H. R. R'y 4,935 | | | | |
| | Apr. 30, '91, St. J. & H. R. R'y 4,935 | 13,905 00 | b | | |
| | July 31, '90, J., St. A. & H. R. R'y 15,000 | | | | |
| | Feb. 28, '91, J., St. A. & H. R. R'y 15,000 | 30,000 00 | c | | |
| | | | | 49,305 00 | 107 |
| 123 | | | | | |
| June | Payments made on ac. C. C. D. salary: | | | | |
| | Feb. 28 | 500 00 | a | | |
| | Mar. 21 | 1,000 00 | b | | |
| | May 1 | 1,500 00 | c | | |
| | " 19 | 2,500 00 | d | | |
| | | | | 5,500 00 | 108 |
| | | | | $1,894,144 50 | |
| 1891. | | | | | |
| July 1 | By balance | | | $946,925 55 | |

Correct.
(Signed) J. E. STRAKE,
*General Manager.*

Jacksonville, Fla., August 26th, 1891.

[Endorsed:] J., T. & K. W. R'y Co. in ac. with Fla. Constr. Co. Received from C. C. D. August 31st, 1891. Exhibit to affidavit of William Pennington. Filed July 6th, 1892. Philip Walter, clerk.

124 STATE OF NEW JERSEY, } ss:
*County of Passaic,* }

William Pennington, of full age, being by me duly sworn according to law, on his oath, says that he resides in the city of Paterson, in the county of Passaic and State of New Jersey; that he is a counsellor-at-law; that he has acted for nearly one year and a half as counsel of The American Construction Company, the complainant in the suit against The Jacksonville, Tampa and Key West Railway Company and other defendants; that, in his capacity as such counsel, he has had frequent interviews with Mr. Charles C. Deming, the treasurer of Jacksonville, Tampa and Key West Railway Company, or vice-president in charge of the financial management of the road, and who is also treasurer, as is understood, or in charge of the financial accounts and matters of the Florida Construction Company.

Mr. Deming, while assuring deponent at all times of his willingness to give information and manifesting such willingness, has at no time been able to answer satisfactorily the numerous questions in regard to the accounts which deponent has asked him.

At the request of Mr. Edward G. Mason, of Chicago, secretary of the complainant, deponent called upon Mr. Deming on the eighteenth day of August, eighteen hundred and ninety-one, for the purpose of requesting the Florida Construction Company to perform a certain contract which it had made with the American Construction Company to deliver to it $25,000 of the bonds of the Jacksonville, Tampa and Key West Railway Company, and for the purpose of making inquiries in regard to the state of the accounts between the Jacksonville, Tampa and Key West Railway Company and Florida Construction Company, the object of the latter inquiry being to ascertain the value of the stock held by the American
125 Construction Company in the Florida Construction Company, and also that which it held in the railway company.

Mr. Deming, in reply to deponent's application, said that he had heard from Mr. Edward G. Mason, of Chicago, and had replied to him that the Florida Construction Company held none of the first-mortgage bonds of the railway company, and could not make delivery according to the terms of the contract, and further stated that he did not know of any way to settle the matter. He stated that an investigation was being made with a view to the adjustment of the accounts between the railway company and the Florida Construction Company, but could throw no light upon the state of the accounts through his own individual knowledge therefor.

He stated on that occasion, and on several others, when deponent met him in reference to various questions of the accounts, that he himself was not an accountant, and did not understand accounts, or those accounts, and that he was obliged to refer all questions in relation to them to the proper accountant of the corporations—that is to say, the general auditor—and that he would write to him for explanation.

Deponent called upon Mr. Deming on several occasions during

the year eighteen hundred and ninety-one for explanations in regard to the various balance-sheets of the railway company and of the Florida Construction Company.

Mr. Deming was unable to give deponent any satisfactory information as to how the capital stock of the Jacksonville, Tampa and Key West Railway Company came to be precisely the sum of $3,010,000.

In the consolidated balance-sheet of March thirty-one, eighteen hundred and ninety-one, of the Jacksonville, Tampa and Key West Railway Company, the first item was: "Road, property and equipment $8,576,000." Deponent asked to have some explanation
126 of how that item was made up. Mr. Deeming replied that he was unable to give deponent definite information; but would write to the auditor for it. He gave deponent his conjectures as to how the item was made up, and then, upon deponent showing him that that explanation made the account entirely wrong, he abandoned the attempt to explain it, but referred to explanations that would be furnished by the auditor.

The item was changed in the balance-sheet of June 30, 1891, to $5,226,000.

A great number of items contained in that account, which appeared to be of very large amount and to require explanation, he was obliged to leave without any adequate explanation. In the consolidation balance-sheet of July one, eighteen hundred and ninety-one, Mr. Deming admitted that it was erroneous that the expenses of operating the Indian River Steamboat Company and the Jupiter and Lake Worth Railway Company should be charged to the Jacksonville, Tampa and Key West Railway Company, while the stock of the steamboat company and of the railway company belonged to the Florida Construction Company.

He admitted that it was wrong that the consolidated mortgage bonds, amounting to four millions of dollars, should be charges against the railway company in that account—the account of March thirty-one, eighteen hundred and ninety-one—together with the bills payable and the first-mortgage bonds on the same side, the consolidated mortgage bonds being held for the purposes of redeeming the first-mortgage bonds and as collateral for the floating indebtedness.

Deponent endeavored on several occasions to obtain from Mr. Deeming explanations of the large and rapid increase of bills payable of the railway company, and obtained none except the general explanation that its increase was due to the shifting of the indebtedness of the Florida Construction Company upon the rail-
127 way company and the assumption by the railway company of that indebtedness, which explanation is inadequate.

Deponent has made very extensive efforts, aided by an expert accountant, during the past year and a half to understand the various balance-sheets and accounts of the railway company and of the Florida Construction Company, both in themselves and in their relations to each other, and has been unable to ascertain the true state of the indebtedness of the railway company or of the Florida Con-

struction Company, or the true state of the accounts between those two companies.

The result of a very extensive examination made by deponent with the aid of an expert accountant, taking the data from the various accounts and balance-sheets officially issued by the officers of the two companies, is that the sum of the bills payable or floating indebtedness of the two companies, that is to say, of the Florida Construction Company and the Jacksonville, Tampa and Key West Railway Company, largely exceeds the increased indebtedness or total loss of the two companies together, as it would appear that they ought to be by the process of comparing all known expenditures and outgoes and payments with the known resources and pecuniary receipts, taking the same in both cases from the official accounts; that this deficiency appears to be nearly the sum of $400,000.

So far as appears, such deficiency has not been explained in whole or in part by the financial officers of the company, although brought to their attention. It does not seem likely that it can be explained, but, if it can, it must be from items not contained in the various published balance-sheets and statements of accounts, and which either do not appear on the books of the company or are not properly entered.

Deponent has had a great number of interviews with Mr. Deming with regard to the accounts of the railway company, and its interdealings with the Florida Construction Company during the last two years.

128 On several occasions, prior to the partial adjustment of the accounts between the Florida Construction Company and the railway company, deponent called Mr. Deeming's attention to the accounts between those two companies, and he admitted that the accounts needed adjustment, and that there was no way of reconciling the various balance-sheets of the railway company (prior to that time) with the balance-sheets of the Florida Construction Company.

That deponent refers to a copy annexed to this affidavit of the account signed by the general auditor, and dated July one, eighteen hundred and ninety-one, between the Florida Construction Company and the Jacksonville, Tampa and Key West Railway Company, showing a balance of $946,925.55 due from the construction company to the railway company, while the balance-sheet of the construction company of the same date shows its indebtedness at the sum of $942,018.98, and offsets that indebtedness partly by a claim of $518,513.43 for alleged interest account.

Deponent states that the adjustment of accounts, which resulted in fixing the indebtedness of the construction company to the railway company at $821,043.25 was only a partial account, leaving many matters of account unliquidated, especially a large balance fairly due to the railway company for interest and large claims for failure on the part of the construction company to provide proper terminals and otherwise to complete and carry out its contracts.

Deponent called on Mr. Deeming to ask to have the stock due to Mr. Mason Young and the American Construction Company and to other stockholders under the last consolidation of the Jacksonville,

Tampa and Key West Railway Company actually issued to the stockholders entitled thereto, and Mr. Deming replied that he would not issue the stock because Mr. Coleman was in California. Deponent then suggested that he did not see that that made any
129 difference, because the certificate book could be easily sent to Mr. Coleman, who could sign the certificates there, and they could be issued on return of the book. Deponent begged Mr. Deming to attend to the matter, to have the stock issued, but Mr. Deming said he could not do so. Deponent then begged him to attend to the matter as soon as Mr. Coleman returned, and he said he would give it his attention, but he declined to promise to issue the stock, and has not referred to the subject since at any of the meetings of deponent with him.

Deponent states that the explanations which have from time to time been furnished by the general auditor at the request of Mr. Deming upon deponent's solicitation and that of others, have been inadequate and unsatisfactory, because in many instances they do not explain, and in many instances are dependent upon entries, which the general auditor did not himself make and was not responsible for, and was obliged to assume to have been correctly entered.

That the account between the construction company and the Jacksonville, Tampa and Key West Railway Company, hereto annexed, shows that many and large payments were made by the Florida Construction Company on account of the Jupiter and Lake Worth Railway Company and Indian River Steamboat Company, and charged in that account to the Jacksonville, Tampa and Key West Railway Company, while, as the balance-sheets of the Florida Construction Company show, the stock and property of the Jupiter and Lake Worth Railway Company and those of the Indian River Steamboat Company belong to the construction company.

Deponent refers to page 5, "Indian River Steamboat Company, $6,270.34," and page 6, "Pusey & Jones, $12,599," also page 7, under date of October, eighteen hundred and ninety, "Payments, account J. & L. W. R'y, $5,407.85," and "Payments, I. R. S. B., $25,277.02."

That deponent has frequently urged Mr. Deming to
130 have the accounts of the companies rectified and to have them examined by expert accountants and placed upon a proper basis, and has frequently remonstrated with him in regard to the looseness of the accounts and their inaccuracies, and has asked that a fair valuation of the land assets of the railroad system should be made so that those assets, and in case of sales the proceeds, could appear in the balance-sheets as elements of value; but although deponent's remonstrances and suggestions have been received with courtesy they have been unavailing except as hereinbefore stated in regard to the changes in the balance-sheets and the partial adjustment of the relations between the two companies.

Deponent states that the accounts of the construction company and of the railway company had been so hopelessly shifted, jumbled and confused that deponent thought it necessary, in order to reach an intelligent view of the real financial condition of things,

to institute a comparison between the total floating indebtedness of the two companies together, as it existed in July last, and the joint resources and income and joint outgoes and expenditures of the two companies, and that was the reason for the investigation with the aid of an expert accountant mentioned hereinbefore.

WILLIAM PENNINGTON.

Sworn and subscribed to before me this 1st day of July, A. D. 1892.

JOHN R. BEAM,
[SEAL.] *Notary Public, of New Jersey.*

[Endorsed:] Circuit court of United States, northern district of Florida, in equity. American Construction Company *vs.* Jacksonville, Tampa & Key West Railway Company *et al.* Affidavit of William Pennington. Filed July 6th, 1892. Philip Walter, clerk.

131 STATE OF NEW JERSEY, *Passaic County,* } *ss:*

Isaac A. Lewis, being by me duly sworn according to law, on his oath saith that he is a resident of the city of Paterson, in the county of Passaic and State of New Jersey; that his business is that of an accountant; that he has been for many years engaged in that occupation, and in the examination and investigation of disputed accounts of municipal and other corporations.

Deponent says that he was employed by Mr. Pennington, of Paterson, New Jersey, to investigate the accounts of the Jacksonville, Tampa and Key West Railway Company and those of the Florida Construction Company; that deponent had before him various official returns and reports of those two companies, but had no access to the books of account or to the vouchers and documents of those companies.

That deponent endeavored with great labor and the expenditure of much time and with the use of all the experience and skill he possessed, and with the aid of such outside explanation and information as he could get, to ascertain from said official reports what ought to be the amount of the floating or unsecured indebtedness of the Florida Construction Company and the Jacksonville, Tampa and Key West Railway Company, together, by making a comparasion of all the pecuniary resources and receipts of both companies as disclosed by the official accounts with all of the expenditures, outgoes and losses similarly disclosed.

Deponent states that he was unable by that process to reach anything like the amount of the existing floating or unsecured indebtedness as disclosed by the official reports, and that the unexplained deficiency was in the neighborhood of $375,000, and nothing
132 that appears in the several published and official balance-sheets and accounts that deponent has seen tends to explain the deficiency.

That deponent has seen a statement of accounts prepared by the general auditor of the two companies after the said deficiency had been brought to his attention, as deponent was informed, and deponent saith that he is unable to see that it explains the said deficiency or reduces it.

ISAAC A. LEWIS.

Sworn and subscribed June twenty-ninth, A. D. 1892, before me.
WM. I. LEWIS,
*Master in Chancery of New Jersey.*

133 STATE OF NEW JERSEY, } ss:
*County of Passaic,* }

I, Albert D. Winfield, clerk of the county of Passaic, and also clerk of the court of common pleas in and for said county, said court being a court of record, do hereby certify that Wm. I. Lewis, before whom the annexed affidavit purports to be taken, was, at the time of taking the same, a master in chancery of N. J., in and for said county and State, duly commissioned and qualified and authorized by the laws of said State to take the same. And, further, that I am well acquainted with the handwriting of the said Wm. I. Lewis, and verily believe that the signature to the jurat of said affidavit is genuine.

In testimony whereof I have hereunto set my hand
[SEAL.] and affixed the seal of the said court and county the 1st day of July, 1892.

A. D. WINFIELD, *Clerk.*

[Endorsed:] Circuit court of United States, northern district of Florida. In equity. American Construction Company *vs.* Jacksonville, Tampa and Key West Railway Company *et al.* Affidavit of Isaac A. Lewis. Filed July 6th, 1892. Philip Walter, clerk.

134 STATE OF NEW YORK, } ss:
*City and County of New York,* }

Edward G. Mason, of full age, being by me duly sworn, according to law, on his oath, says: I reside in the city of Chicago, State of Illinois. I am and have been for may years one of the directors of the American Construction Company, a corporation duly organized and existing under and in accordance with the laws of the State of Illinois. I have been for some time the secretary of that corporation; as such officer, I am informed as to the facts and matters stated in the bill of complaint filed by the said company against the Jacksonville, Tampa and Key West Railway Company and others, defendants. The said The American Construction Company is, and ever since the consolidation of the Jacksonville, Tampa and Key West Railway Company with the Palatka and Indian River Railway Company, on or about the fourth day of April, eighteen hundred and eighty-seven, has been, the owner of and entitled to

sixteen hundred and eighty-seven and one-half shares of the capital stock of the Jacksonville, Tampa and Key West Railway Company of the par value of one hundred dollars each; that the defendant the Florida Construction Company, by contract dated the fifteenth day of December, eighteen hundred and eighty-three, entered into an agreement to deliver to the complainant twenty-five thousand dollars of the first-mortgage bonds of the said The Jacksonville, Tampa and Key West Railway Company; that the said The Florida Construction Company has neglected and refused to deliver to the said complainant the said bonds, and upon application made by this deponent to Charles C. Deming, the secretary of the said The Florida Construction Company, the said Charles C. Deming replied that the company was unable to fulfill its said contract.

135 That deponent being in Chicago on the fourteenth day of August, eighteen hundred and ninety-one, addressed a letter of that date to Mr. Charles C. Deming, as treasurer, in the following words:

"DEAR SIR—I have recently been appointed secretary of the American Construction Company, and find upon examination that the Jacksonville, Tampa and Key West Railway Company owes the American Construction Company $25,000 of the first-mortgage bonds of the J., T. & K. W. R. R. Co. by contract, and that these bonds have not been delivered to the American Construction Company. Will you please have them sent to me at your early convenience."

That this deponent inadvertently addressed the letter to Mr. Deming, as treasurer of the railway company, and stated that the bonds were due from the Jacksonville, Tampa and Key West Railway Company instead of from the Florida Construction Company.

That this deponent received a letter in reply from Mr. Deming in the words following:

"DEAR SIR—I beg to acknowledge receipt of your favor of the 14th inst. in regard to the American Construction Company.

"The Florida Construction Company does not own any of the first-mortgage bonds of the J., T. & K. W. R'y Co., and I do not see how it can make the delivery to the American Construction Company."

That deponent has received no further communication from Mr. Deming on the subject.

That deponent about the same time wrote to William Pennington, at Paterson, New Jersey, who was acting as counsel of the American Construction Company, requesting him to obtain information as to the said bonds, and deponent was subsequently informed by Mr. Pennington that he called on Mr. Deming and was unable to obtain any assurance from Mr. Deming that any settlement of the said claim could be made.

136 (2) That it appears from the annual report of the general auditor of the Jacksonville, Tampa and Key West Railway Company, dated July first, eighteen hundred and ninety-one, that the capital stock of the defendant the railway company is the sum of $3,010,000 at par.

That of this capital stock it appears from the several successive

balance-sheets of the Florida Construction Company, duly issued by its financial officers, that that company owns a large majority of the said capital stock of the railway company.

That the balance-sheet of October first, eighteen hundred and eighty-nine, shows the amount of such stock then held by the construction company at par to have been $2,333,800.

That the balance-sheet of said company, dated September thirty, eighteen hundred and ninety-one, shows that it then held the same amount of said capital stock, and also held $81,500 of the capital stock of the Sanford and Lake Eustis Railroad Company, and $300,000 of the capital stock of the Atlantic Coast, St. John's and Indian River Railway Company, the stock of the two last-named companies being exchangeable for stock of the Jacksonville, Tampa and Key West Railway Company, under the terms of the consolidation of the said two companies.

(3) That deponent has been informed, and has always understood, that the defendant Robert H. Coleman holds the majority of the stock of the Florida Construction Company, and therefore has control of that company, and through his control of that company controls the election of the directors and officers of the defendant The Jacksonville, Tampa and Key West Railway Company.

That the defendant Robert H. Coleman, who is president of the said defendant The Jacksonville, Tampa and Key West Railway Company, claims to hold notes of the said railway company
137 to a large amount, claimed on the eighth of March, eighteen hundred and ninety-two, to have been $1,767,000.

(4) That the balance-sheet of the defendant railway company, dated December thirty-one, eighteen hundred and eighty-eight, shows that the amount of the bills payable of the said company, then outstanding, was $10,000.

That the balance-sheet dated June thirty, eighteen hundred and ninety, shows the amount of bills payble at that date as $171,599.31; and that the balance-sheet dated June thirty, eighteen hundred and ninety-one, shows the bills payable of that company at that date to have been $1,758,349.75; and also that the said railway company was indebted to Robert H. Coleman in the amount of $9,935, and to James H. Young in the amount of $19,500, making a total floating indebtedness on that date of $1,787,784.75.

That according to a statement made by the treasurer of the said railway company, the said bills payable amounted in March, eighteen hundred and ninety-two, to over $1,800,000, the said treasurer stating that the bills payable recorded in his office amounted on the fourteenth day of April, eighteen hundred and ninety-two, to $2,011,321.87, not including $87,000 which had then been paid off by sale of consolidated bonds of the said The Jacksonville, Tampa and Key West Railway Company, so that previous to the sale of these bonds the amount of the bills payable must have been, according to his statement, $2,098,321.87.

The said treasurer stated at the same time that this amount included the bills payable of the Florida Construction Company, the amount of which, as shown by the last balance-sheet in the posses-

sion of the complainant in this suit, was $269,000, and since the issue of the said balance-sheet the said Florida Construction
138 Company has not, as deponent is informed and believes, increased the amount of its biils payable; therefore, deducting from the total of $2,098,321.87 the said sum of $269,000, there remains as the amount of the bills payable of the said railway company prior to the sale of the said consolidated bonds $1,829,321.87.

(5) Deponent is informed from the printed report of the said The Jacksonville, Tampa and Key West Railway Company, dated June thirty, eighteen hundred and ninety-one, that the net earnings of said company, after payment of all expenses of operation and maintenance during the year ending June thirty, eighteen hundred and ninety, were $123,567.46, and during the year ending June thirty, eighteen hundred and ninety-one, the said earnings were $257,338.79, and that the said earnings for the ten months ending April thirty, eighteen hundred and ninety-two, as shown by the report of the general auditor of the said railway company for that date, amount to the sum of $306,821.78.

(6) That the account current between the Jacksonville, Tampa and Key West Railway Company and the Florida Construction Company rendered July one, eighteen hundred and ninety-one, made from the books of and rendered by the said Florida Construction Company, shows a balance in favor of the said railway company of $946,925.55, while the balance-sheet of the Florida Construction Company of the date July one, eighteen hundred and ninety-one, states the said sum as $942,018.96, and claims as an asset of the said Florida Construction Company an account termed "J.. T. & K. W. R'y Co. interest account," being an alleged indebtedness of the said railway to the said construction company on that date of $518,513.43, so that according to the books of the said Florida Construction Company it was indebted on that date to the said railway company on balance in the sum of $423,505.53.

139 That upon a partial examination and adjustment of the accounts between the said companies, more particularly referred to in the bill herein, the balance due from the Florida Construction Company to the railway company was found to be $821,043.23, and that the balance-sheet of the Florida Construction Company of September thirty, eighteen hundred and ninety-one, shows that at that date the said construction company was indebted to the said railway company in the said sum of $821,043.23.

(7) That an examination of the said account current of July one, eighteen hundred and ninety-one, shows that according to the books of the said Florida Construction Company that company charges as paid during the year eighteen hundred and eighty-nine on account of the said railway company $274,011.24, and that the railway company was credited with payments on account of the construction company in the sum of $541,658.79.

That during the year eighteen hundred and ninety the said construction company charges as paid by it on account of the railway company the sum of $210,868.12, and credited the railway company

with payments on account of the construction company to the amount of $885,612.49.

That during the first six months of the year eighteen hundred and ninety-one the said construction company charged as paid on account of the said railway company $22,160.51, and credited the said railway company paid on account of said Florida Construction Company the sum of $128,808.52.

That during the year eighteen hundred and eighty-nine the railway company was credited with payment of notes of the Florida Construction Company to the amount of $382,500, while the construction company charges as paid on notes of the railway company $98,875.

140 That during the year eighteen hundred and ninety the said railway company was credited with payment of notes of the Florida Construction Company to the amount of $533,000, while the Florida Construction Company charges as paid on notes of the railway company $38,500; and

That during the first six months of the year eighteen hundred and-ninety-one the railway company was credited with the payment of notes of the Florida Construction Company to the amount of $12,500, while no notes of the railway company were charged as paid by the Florida Construction Company.

(8) That deponent is informed that the present directors of the defendant The Jacksonville, Tampa and Key West Railway Company are none of them citizens and residents of the State of Florida, but that Robert H. Coleman is a resident and citizen of the State of Pennsylvania; Charles C. Deming and Archibald Rogers are citizens and residents of the State of New York, and that John W. Candler and Frank Q. Brown are citizens and residents of the State of Massachusetts.

(9) Deponent, upon inquiry of directors and ex-directors of the said defendant The Jacksonville, Tampa and Key West Railway Company, has been informed by them that the said board of directors has no regular days of meeting; that it meets infrequently and irregularly; that reports as to the management of the company's business are rarely made to it, and that the said board, neither by itself nor by any committee, supervises the expenditures of the defendant company.

(10) That of the five existing directors of the said defendant railway company, three, being a majority—to wit, Robert H.
141 Coleman, Charles C. Deming and Archibald Rogers—are directors of the said Florida Construction Company.

(11) That in the report of the general manager to the president of the defendant railway company, for the year ending June thirty, eighteen hundred and ninety-one, it is stated that during the year $31,340 *was* paid for coupons of the bonds of the Atlantic Coast, St. John's and Indian River Railway Company, being class two of the bonded indebtedness of the said defendant company mentioned in the bill herein.

That the total amount of the said issue of class two was $300,000, and the whole interest thereon is $18,000 per annum.

That of these bonds, as appears by the balance-sheet of the Florida Construction Company of September thirty, eighteen hundred and ninety-one, $225,000 belonged to the said Florida Construction Company, so that there are only $75,000 held elsewhere, the said Florida Construction Company having purchased in the year eighteen hundred and eighty-nine, the said $225,000, as appears by its balance-sheet of September thirty, eighteen hundred and ninety-one, still held by it.

(12) That the Florida Construction Company owns the capital stock of the Indian River Steamboat Company and of the Jupiter and Lake Worth Railway Company, as appears by the balance-sheet of the Florida Construction Company, dated September thirty, eighteen hundred and ninety-one.

That the cost of constructing and maintaining the properties of these two companies, and of operating the same, was paid in large part out of the funds of the defendant railway company; and that this appears from the balance-sheet of the railway company, of June thirty, eighteen hundred and ninety-one, on the first page of
142 which the Indian River Steamboat Company is found charged with $145,230.94, and the Jupiter and Lake Worth Railway Company is charged with $43,316.11. In the account current between the two said companies, that is to say, the construction company and the railway company, there is charged to the railway company money paid on account of the Indian River Steamboat Company, $6,270.74, and "Pd. Pusey & Jones" on the same account, $12,500; and paid on account of the Jupiter and Lake Worth Railway Company, $5,407,85, showing that sums paid on account of these two companies by the Florida Construction Company were by it charged against the Jacksonville, Tampa and Key West Railway Company.

EDWARD G. MASON.

Subscribed and sworn to before me this 30th day of June, 1892.

WILLIAM NELSON JOHNSON,

[SEAL.] *Notary Public, Westchester County.*

Certificate filed in New York Co.

[Endorsed:] Circuit court United States, northern district of Florida. In equity. American Construction Company *vs.* Jacksonville, Tampa & Key West Railway Company *et al.* Affidavit of Edward G. Mason. Filed July 6th, 1892. Philip Walter, clerk.

143 STATE OF NEW YORK, } *ss:*
*City and County of New York,* }

Alfred Bishop Mason, of full age, being by me duly sworn according to law, on his oath says: I reside in the city of New York. I am and have been for many years one of the directors of the American Construction Company, complainant in the suit of that company against the Jacksonville, Tampa and Key West Railway Company. The American Construction Company is a corporation duly organ-

ized and existing under and in accordance with the laws of the State of Illinois. As director I have information as to the facts and matters stated in the bill of complaint filed by the said company against the said railway and others, defendants. The said The American Construction Company is, and ever since the consolidation of the Jacksonville, Tampa and Key West Railway Company with the Palatka and Indian River Railway Company on or about the fourth day of April, eighteen hundred and eighty-seven, has been, the owner of and entitled to sixteen hundred and eighty-seven and one-half shares of the capital stock of the Jacksonville, Tampa and Key West Railway Company of the par value of one hundred dollars each; that the defendant The Florida Construction Company, by contract dated the fifteenth day of December, eighteen hundred and eighty-three, entered into an agreement to deliver to the complainant twenty-five thousand dollars of the first-mortgage bonds of the said The Jacksonville, Tampa and Key West Railway Company; that the said The Florida Construction Company has neglected and refused to deliver to the said complainant the said bonds, and upon application made to Charles C. Deming, the secretary of the said The Florida Construction Company, the said Charles C. Deming replied that the company was unable to fulfill its said contract.

144 (2) That it appears from the annual report of the general auditor of the Jacksonville, Tampa and Key West Railway Company, dated July first, eighteen hundred and ninety-one, that the capital stock of the defendant the railway company is the sum of $3,010,000 at par.

That of this capital stock it appears from the several successive balance-sheets of the Florida Construction Company, duly issued by its financial officers, that that company owns a large majority of the said capital stock of the railway company.

That the balance-sheet of October first, eighteen hundred and eighty-nine, shows the amount of such stock then held by the construction company at par to have been $2,333,800.

That the balance-sheet of said company dated September thirty, eighteen hundred and ninety-one, shows that it then held the same amount of said capital stock, and also held $81,500 of the capital stock of the Sanford and Lake Eustis Railroad Company, and $300,000 of the capital stock of the Atlantic Coast, St. John's and Indian River Railway Company, the stock of the two last-named companies being exchangeable for stock of the Jacksonville, Tampa and Key West Railway Company under the terms of the consolidation of the said two companies.

(3) That deponent has been informed and has always understood and believes that the defendant Robert H. Coleman holds the majority of the stock of the Florida Construction Company, and therefore has control of that company, and through his control of that company controls the election of the directors and officers of the defendant The Jacksonville, Tampa and Key West Railway Company.

That the defendant Robert H. Coleman, who is president of the said defendant The Jacksonville, Tampa and Key West Railway

Company, claims to hold notes of the railway company to a
145 large amount, claimed on the eighth of March, eighteen hundred and ninety-two, to have been $1,767,000.

(4) That the balance-sheet of the defendant railway company, dated December thirty-one, eighteen hundred and eighty-eight, shows that the amount of the bills payable of the said company then outstanding was $10,000.

That the balance-sheet dated June thirty, eighteen hundred and ninety, shows the amount of bills payable at that date as $171,599.31; and

That the balance-sheet dated June thirty, eighteen hundred and ninety-one, shows the bills payable of that company at that date to have been $1,758,349.75; and also that the said railway company was indebted to Robert H. Coleman in the amount of $9,935, and to James H. Young in the amount of $19,500, making a total floating indebtedness on that date of $1,787,784.75.

That according to a statement made by the treasurer of the said railway company the said bills payable amounted in March, eighteen hundred and ninety-two, to over $1,800,000, the said treasurer stating that the bills payable recorded in his office amounted on the fourteenth day of April, eighteen hundred and ninety-two, to $2,011,321.87, not including $87,000 which had then been paid off by the sale of consolidated bonds of the said The Jacksonville, Tampa and Key West Railway Company, so that previous to sale of these bonds the amount of the bills payable must have been, according to his statement, $2,098,321.87.

The said treasurer stated at the same time that this amount included the bills payable of the Florida Construction Company, the amount of which, as shown by the last balance-sheet in the possession of the complainant in this suit, was $269,000, and, since the issue of the said balance-sheet, the said Florida Construction Company
has not, as deponent is informed and believes, increased the
146 amount of its bills payable; therefore, deducting from the total of $2,098,321.87 the said sum of $269,000, there remains as the amount of the bills payable of the said railway company prior to the sale of the said consolidated bonds $1,829,321.87.

(5) Deponent is informed from the printed report of the said The Jacksonville, Tampa and Key West Railway Company, dated June thirty, eighteen hundred and ninety-one, that the net earnings of said company, after payment of all expenses of operation and maintenance during the year ending June thirty, eighteen hundred and ninety, were $123,567.46, and during the year ending June thirty, eighteen hundred and ninety-one, the said earnings were $257,338.79, and that the said earnings for the ten months ending April thirty, eighteen hundred and ninety-two, as shown by the report of the general auditor of the said railway company for that date, amounted to the sum of $306,821.78.

(6) That the account current between the Jacksonville, Tampa and Key West Railway Company and the Florida Construction Company, rendered July one, eighteen hundred and ninety-one, made from the books of and rendered by the said Florida Construc-

tion Company, shows a balance in favor of the said railway company of $946,925.65, while the balance-sheet of the Florida Construction Company of the same date, July one, eighteen hundred and ninety-one, states the said sum as $942,018.98, and claims as an asset of the said Florida Construction Company an account termed "J., T. & K. W. R'y Co., interest account," being an alleged indebtedness of the said railway to the said construction company on that date of $518,513.43, so that, according to the books of the said Florida Construction Company, it was indebted on that date to the said railway company, on balance, in the sum of $423,505.53.

147 That, upon a partial examination and adjustment of the accounts between the said companies, more particularly referred to in the bill herein, the balance due from the Florida Construction Company to the railway company was found to be $821,043.25, and that the balance-sheet of the Florida Construction Company of September thirty, eighteen hundred and ninety-one, shows that at that date the said construction company was indebted to the said railway company in the said sum of $821,043.23.

(7) That an examination of the said account current of July one, eighteen hundred and ninety-one, shows that, according to the books of the said Florida Construction Company, that company charges as paid during the year eighteen hundred and eighty-nine, on account of the said railway company, $274,011.24, and that the railway company was credited with payments on account of the construction company in the sum of $541,658.79.

That during the year eighteen hundred and ninety the said construction company charges as paid by it on account of the railway company the sum of $210,868.12, and credited the railway company with payments on account of the construction company to the amount of $885,612.49.

That during the first six months of the year eighteen hundred and ninety-one the said construction company charged as paid on account of the said railway company $22,160.51, and credited the said railway company, paid on account of said Florida Construction Company, the sum of $128,808.52.

That during the year eighteen hundred and eighty-nine the railway company was credited with payment of notes of the Florida Construction Company to the amount of $382,500, while the construction company charges as paid on notes of the railway company $98,875.

148 That during the year eighteen hundred and ninety the said railway company was credited with payment of notes of the Florida Construction Company to the amount of $533,000, while the Florida Construction Company charges as paid on notes of the railway company $38,500. And

That during the first six months of the year eighteen hundred and ninety-one, the railway company was credited with the payment of the notes of the Florida Construction Company to the amount of $12,500, while no notes of the railway company were charged as paid by the Florida Construction Company.

(8) That deponent is informed that the present directors of the

defendant The Jacksonville, Tampa and Key West Railway Company are none of them citizens or residents of the State of Florida, but that Robert H. Coleman is a resident and citizen of the State of Pennsylvania; Charles C. Deming and Archibald Rogers are citizens and residents of the State of New York: and that John W. Candler and Frank Q. Brown are citizens and residents of the State of Massachusetts.

(9) Deponent, upon inquiry of directors and ex-directors of the said defendant The Jacksonville, Tampa and Key West Railway Company, has been informed by them that the said board of directors has no regular days of meeting; that it meets infrequently and irregularly; that reports as to the management of the company's business are rarely made to it, and that the said board neither by itself, nor by any committee, supervises the expenditures of the defendant company.

(10) That of the five existing directors of the said defendant railway company, three, being a majority—to wit, Robert H. Coleman, Charles C. Deming and Archibald Rogers—are directors of the said Florida Construction Company.

149 (11) That in the report of the general manager to the president of the defendant railway company for the year ending June thirty, eighteen hundred and ninety-one, it is stated that, during the year, $31,540 was paid for coupons of the bonds of the Atlantic Coast, St. John's and Indian River Railway Company, being class two of the bonded indebtedness of the said defendant company, mentioned in the bill herein.

That the total amount of the said issue of class two was $300,000, and the whole interest thereon is $18,000 per annum.

That of these bonds, as appears by the balance-sheet of the Florida Construction Company of September thirty, eighteen hundred and ninety-one, $225,000 belonged to the said Florida Construction Company, so that there are only $75,000 held elsewhere, the said Florida Construction Company having purchased, in the year eighteen hundred and eighty-nine, the said $225,000, as appears by its balance-sheet of September thirty, eighteen hundred and ninety-one, still held by it.

(12) That the Florida Construction Company owns the capital stock of the Indian River Steamboat Company, and of the Jupiter and Lake Worth Railway Company, as appears by the balance-sheet of the Florida Construction Company dated September thirty, eighteen hundred and ninety-one.

That the cost of constructing and maintaining the properties of these two companies, and of operating the same, was paid, in large part, out of the funds of the defendant railway company; and that this appears from the balance-sheet of the railway company of June thirty, eighteen hundred and ninety-one, on the first page of which the Indian River Steamboat Company is found charged with $145,230.94, and the Jupiter and Lake Worth Railway Com-

150 pany is charged with $43,316.11. In the account current between the two said companies, that is to say, the construction company and the railway company, there is charged to the railway

company money paid on account of the Indian River Steamboat Company $6,270.74, and " p'd Pusey & Jones " on the same account $12,500; and paid on account of the Jupiter and Lake Worth Railway Company $5,407.85, showing that sums paid on account of these two companies by the Florida Construction Company were by it charged against the Jacksonville, Tampa and Key West Railway Company.

ALFRED BISHOP MASON.

Sworn to before me this 29th day of June, 1892.
[SEAL.] ANTHONY GREF,
*Notary Public, Kings County.*

Certificate filed in N. Y. Co.

[Endorsed:] Circuit court of United States, northern district of Florida. In equity. American Construction Company *vs.* Jacksonville, Tampa and Key West Railway Company *et al.* Affidavit of Alfred Bishop Mason. Filed July 6th, 1892. Philip Walter, clerk.

151 Circuit Court of the United States, Northern District of Florida.

AMERICAN CONSTRUCTION COMPANY
*vs.*
JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY *et al.*

Comes now the complainant, by Bisbee & Rinehart, its attorneys, and moves this honorable court for writs of injunction against the said The Jacksonville, Tampa and Key West Railway Company and the said The Florida Construction Company, as prayed for in the bill of complaint; also for an order appointing a receiver of all the moneys, tolls, incomes, railroads, properties, of every nature and kind, of the said defendant railway company.

This motion will be called for hearing thereon on the 11th day of July, A. D. 1892, in open court at Jacksonville, Florida.

July 6th, 1892.

BISBEE & RINEHART,
*Complainant's Solicitors.*

[Endorsed:] Circuit court United States, northern district of Florida. American Construction Company *vs.* Jacksonville, Tampa and Key West Railway Company *et al.* Motion for injunction and receiver. Filed Jul- 6, 1892. Philip Walter, clerk.

152 Circuit Court of the United States, Northern District of Florida.

AMERICAN CONSTRUCTION COMPANY
*vs.*
JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY *et al.*

Upon the application of the complainant for a temporary restraining order and for defendant to show cause, and it appearing from

the complainant's bill of complaint and the affidavits and exhibits in support thereof that proper grounds exist*ing* therefor, it is ordered, adjudged and decreed as follows, to wit:

1st. That the defendant The Jacksonville, Tampa and Key West Railway Company, its officers, agents, attorneys and servants, and each and every of them, be and are hereby enjoined and restrained from substituting any of its promissory notes or other obligations for the promissory notes and obligations of the defendant The Florida Construction Company, or of any other person or corporation; and the said defendant railway company, its officers, agents, attorneys, servants and employees are hereby enjoined and restrained from remitting, sending or removing in any manner whatsoever, any of the income, tolls and revenues of the said defendant company from the jurisdiction of this court, either to its treasurer in New York or to any other officer or person whatsoever; and the said defendant railway company, its officers, agents, attorneys and servants are hereby further enjoined and re-
153 strained from selling and disposing of, hypothecating, or pledging any of the bonds of the issue known as the four million six per cent. consolidated mortgage bonds at less than their par value.

It is further decreed that this order shall remain in full force and effect until the complainant's motion for a writ of injunction and for the appointment of a receiver can be heard and determined.

3d. The defendant The Jacksonville, Tampa and Key West Railway Company is hereby ordered and decreed to show cause, if any they can on or before the 11th day of July, A. D. 1892, at ten o'clock a. m. of that day, why some fit and competent person should not be appointed receiver of the tolls, revenues and incomes of the said company and of all the lines of railroad and properties of every nature and kind now owned or in possession and control of the said Jacksonville, Tampa and Key West Railway Company.

CHARLES SWAYNE,
*U. S. Judge.*

[Endorsed:] Circuit court United States, northern district of Florida. American Construction Company *vs.* Jacksonville, Tampa & Key West Railway Company. Restraining order. Filed July 6th, 1892. Philip Walter, clerk.

154 UNITED STATES OF AMERICA, }
*Northern District of Florida.* }

The President of the United States of America to the Jacksonville, Tampa and Key West Railway Company, Florida Construction Company, the Florida Commercial Company, Rob't H. Coleman, Chas. G. Deming, Archibald Rogers, Frank Q. Brown and John W. Chandler, directors of the Jacksonville, Tampa and Key West Railway Company:

We command you, and every of you, that you appear before the judges of the circuit court of the United States of America, for the

fifth circuit and northern district of Florida, at Jacksonville, in said district, on the first Monday, being the first day of August next, to answer to a bill of complaint exhibited against you by the American Construction Company, and filed in the clerk's office of said court, and then and there to receive and abide by such judgment and decree as said court shall have considered in this behalf. And this you are not to omit, upon pain of judgment by default being pronounced against you.

To the marshal of the United States, to execute and return.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of this court, at the city of Jacksonville, in said district, this 9th day of July, A. D. 1892.

[SEAL.]

PHILIP WALTER, *Clerk.*

BISBEE & RINEHARDT,
*Solicitor for Complainant.*

155 *Memorandum.*

The above-named defendants are notified that unless they shall enter their appearance in the clerk's office of said court, at Jacksonville, aforesaid, on or before the day on which the above is returnable, the complaint will be taken against them, as confessed, and a decree entered accordingly.

PHILIP WALTER, *Clerk.*

[Endorsed:] Received this chancery subpœna on the 9th day of July, A. D. 1892, and executed the same by delivering true copies thereof and showing this original to Chas. C. Deming on July 9th, 1892, at Jacksonville, Fla., Chas. C. Deming as vice-president of the Jacksonville, Tampa & Key West R'y Co., and Chas. C. Deming, as director of the Florida Construction Co., on July 11th, 1892, at Jacksonville, Fla. Edmund G. Weeks, U. S. marshal, by C. B. Rogers, dept. Circuit court United States, northern district of Florida. American Construction Co. *vs.* J., T. & K. W. R'y Co. *et al.* Chancery subpœna. Returnable to rule day, first Monday in August, A. D. 1892. Filed Jul- 11, 1892. Philip Walter, clerk.

156 In the Circuit Court of the United States for the Northern District of Florida.

THE AMERICAN CONSTRUCTION COMPANY
*vs.*
THE JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY *et al.*

Now comes the said defendant The Jacksonville, Tampa and Key West Railway Company and moves the court for an extension of the time within which defendant is required to show cause why a receiver should not be appointed, and for a continuance of the hearing of the motion of the complainant for the appointment of a re-

ceiver and injunction for the period of thirty days, or such time as the court may designate, on the grounds set forth in the affidavits herewith filed, and on the following grounds:

1. There has been no due or adequate notice to defendant railway company, and no sufficient time to make its response and showing against the motion for a receiver.

2. There has been no notice to the other codefendants in said suit.

3. There has been no notice to the mortgagees, the trustees for the bondholders or to the bondholders of said railway company, and no notice to the stockholders of said defendant railway company.

157 4. And upon other grounds appearing from affidavits filed herewith.

COOPER & COOPER,
T. M. DAY, JR.,
*Solicitors for J., T. & K. W. R'y Co.*

[Endorsed:] U. S. circuit court, northern district of Florida. American Construction Company *vs.* J., T. & K. W. R'y Co. *et al.* Motion for continuance of hearing of motion for receiver. Filed July 11, 1892. Philip Walter, clerk. Cooper & Cooper, T. M. Day, Jr., solicitors for J., T. & K. W. R'y Co.

158 In the Circuit Court of the United States for the Northern District of Florida.

THE AMERICAN CONSTRUCTION COMPANY
*vs.*
THE JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY *et al.*

Now comes the said defendant The Jacksonville, Tampa and Key West Railway Company and moves the court for an extension of the time within which defendant is required to show cause why a receiver should not be appointed, and for a continuance of the hearing of the motion of the complainant for the appointment of a receiver and injunction, for the period of thirty days, or such time as the court may designate, on the grounds set forth in the affidavits herewith filed.

COOPER & COOPER,
T. M. DAY, JR.,
*Solicitors for the Jacksonville, Tampa and Key West Railway Company.*

To Messrs. Bisbee & Rinehart, complainant's solicitors:

You will please take notice that we shall present the above motion to the court at ten a. m. on the 11th day of July, 1892, or as soon thereafter as counsel can be heard.

COOPER & COOPER,
T. M. DAY, JR.,
*Solicitors for the Jacksonville, Tampa and Key West Railway Company.*

159 [Endorsed:] U. S. circuit court, northern dis. of Fla. American Construction Co. *vs.* J., T. & K. W. R'y Co. *et al.* Motion for continuance of hearing of motion for appointment of receiver. Filed July 11, 1892. Philip Walter, clerk. Cooper & Cooper, T. M. Day, Jr., solicitors for J., T. & K. W. R'y Co.

Served a true copy of the within motion on Horatio Bisbee this 9th day of July, A. D. 1892.

GEO. J. ZEHNBAUER.

Before me came Geo. J. Zehnbauer, who, being sworn, says that he served a true copy of the *written* notice on Horatio Bisbee this 9th day of July, A. D. 1892.

G. D. ACKERLY,
*Notary Public, State at Large.*

[SEAL.]

160 STATE OF FLORIDA, } *ss:*
*County of Duval,* }

J. E. Starke, being duly sworn, deposes and says that he is general auditor of The Jacksonville, Tampa and Key West Railway Company, one of the defendants in the suit of The American Construction Company *vs.* The Jacksonville, Tampa and Key West Railway Company *et al.*, now pending in the circuit court of the United States for the northern district of Florida; that he has examined the bill of complaint in this cause, and the allegations therein contained, and that, in order to make a thorough examination of the matters therein alleged and prepare a full and complete statement of the accounts therein involved, it will be necessary for him to go into a long and searching examination, both of the books of account of the Jacksonville, Tampa and Key West Railway Company, which are in Jacksonville, and the books of account of the Florida Construction Company, which are in the city of New York; that he believes that said examination and preparation of said statement, though prepared with diligence, and with the aid of proper assistants, cannot be completed within less than thirty days.

That as to many of the alleged matters of mismanagement and improper keeping of the accounts charged in the bill, deponent states of his own knowledge that they are untrue, and that defend-
161 ant railway company, within reasonable time, can make full answer to and explanation of the same.

J. E. STARKE.

Sworn to and subscribed before me this eleventh day of July, 1892.

G. D. ACKERLY,
*Notary Public, State at Large.*

[SEAL.]

[Endorsed:] In U. S. circuit court, northern district of Florida. The American Construction Co. *vs.* Jacksonville, T. & K. W. R'y Co. *et al.*; affidavit of J. E. Starke on motion for continuance. Filed Jul- 11, 1892. Philip Walter, clerk.

162 STATE OF FLORIDA, } ss:
*County of Duval,* }

R. B. Cable, being duly sworn, deposes and says that he is general manager of The Jacksonville, Tampa and Key West Railway Company, one of the defendants in the suit of The American Construction Company *vs.* The Jacksonville, Tampa and Key West Railway Company *et al.*, now pending in the circuit court of the United States for the northern district of Florida, and is now, and has been, general manager since December, 1890, of said railway company.

That he was served with a notice of the motion of the complainant for receiver and injunction, and also restraining order made by the court on the morning of Thursday, July 7th, 1892; that prior to that time he had no knowledge or information of said suit being instituted, or the intention of complainant to apply for the said receiver or injunction.

That the executive and financial dealings of said railway company, other than the mere management of operation, have been carried on in the New York office of the said railway company, and deponent is not fully informed as to those dealings, and had no knowledge of many material matters alleged in the bill, and could not prepare or give the information to have prepared a defense to the said bill for receiver and injunction.

That deponent within two hours after the service of said notice, to wit, about 10.30 a. m. on the said July 7th, despatched a telegram to Charles C. Deming, at New York city, vice-president and secretary of the said company in New York, informing him of the institution of the suit and the setting down of the said motion for receiver and injunction; deponent says that Mr. Deming arrived in Jacksonville at noon Saturday, July 9th, which was the first through train which left New York after the service of said *motion* on deponent.

163 That prior to the arrival of Mr. Deming, deponent, from a lack of knowledge of the matters involved, was unable to prepare a defense to said motion, and was not able to make an arrangement for the employment of counsel until the same could be provided for on the arrival of Mr. Deming by his advice and instruction, and the counsel were not employed for the defense of said motion until the afternoon of Saturday, July 9th, after the said arrival of Mr. Deming.

Deponent says that he spent the night of July 6th at Pablo Beach, and was not informed of the motion and restraining order served on T. M. Day, Jr., until after his return to Jacksonville the following morning, and after the service of the said papers upon himself.

R. B. CABLE.

Sworn to and subscribed before me this 11th day of July, 1892.

G. D. ACKERLY,
*Notary Public, State at Large.* [SEAL.]

[Endorsed:] In U. S. circuit court, northern district of Florida. The American Construction Co. *vs.* Jacksonville, Tampa and Key West R'y Co. *et al.* Affidavit of R. B. Cable. Filed July 11th, 1892. Philip Walter, clerk.

164 STATE OF FLORIDA, } ss:
*County of Duval,* }

Charles C. Deming, being duly sworn, deposes and says that he resides in the city of New York; that he is the vice-president and secretary of The Jacksonville, Tampa and Key West Railway Company, one of the defendants in the suit of The American Construction Co. *vs.* The Jacksonville, Tampa and Key West Railway Company *et al.*, now pending in the circuit court of the United States for the northern district of Florida.

That he is acquainted with the officers of the said railway company, and is familiar with the financial and executive transactions of the said railway company for the past eleven years.

That the president of said railway company, Robert H. Coleman, resides in Cornwall, Lebanon county, Pennsylvania.

That the treasurer of said railway company, Hugh M. Maxwell, resides in the city of Philadelphia, Pennsylvania.

That the above-named persons compose the financial and executive officers of the said railway company charged with the control thereof at the time of the filing of bill in this cause, and that all said persons were outside the State of Florida at that time, and that they are now all outside the State with the exception of deponent.

That deponent was notified of the pendency of this suit by a telegram received at about 1 o'clock p. m., Thursday, July 7th, 1892, despatched from Jacksonville by R. B. Cable, general manager of the said railway company.

That deponent at once made his preparations and departed from New York, immediately after the receipt of said telegram, for Jacksonville on the first train leaving New York on said Thursday night making through connection to Jacksonville, and on
165 which deponent arrived in Jacksonville at noon on Saturday, July 9th, 1892.

That the allegations of said bill and matters involved in said cause relate to the executive and financial management of said railway company, which financial management as to the matters referred to in the bill has always been hitherto largely conducted in the city of New York, and that there are no officers of the said railway company in Florida who have full and complete knowledge of the said matters, so as to be able to make a complete showing and answer as to the matters of financial management charged and referred to in the bill in this cause.

That the financial transactions of the said railway company referred to in the bill cover several years of its history, and involve the application and expenditure of a large amount, and also many different transaction, as is shown by statements in the bill, so that it has been impossible, within the short time between the service of

the said notice on the manager of the defendant company and the date of the hearing, to collect together the necessary facts and information to make a full explanation of and reply to the matters charged and alleged in the bill.

That the record in this cause shows that there has been no service of notice whatever of the hearing of the application for receiver and injunction upon any of the defendants to the bill, except the Jacksonville, Tampa and Key West Railway Company, and that several of the said defendants have very large interest in the property involved, and claims against the defendant company which will be vitally affected by the appointment of a receiver in this cause.

That, as appears from the bill, the Florida Construction Company, one of the defendants in this cause, is the owner of about twenty-seven thousand (27,000) shares of stock of the defendant company out of an issue of thirty thousand (30,000) shares,
166 and is also the owner of a large amount of the bonds of the said railway company.

That Robert H. Coleman has advanced money to the defendant company and is a creditor thereof to the amount of over a million and a half of dollars, a large portion of which indebtedness is secured by mortgage bonds of the defendant railway company.

That neither of these defendants have been served with a notice of a motion for receiver, nor had they any anticipation or knowledge that any such proceeding was in contemplation.

That neither of said defendants are represented here by any person authorized to appear for them, or to act in their interest, and that the interests of each of these defendants are paramount in character and far greater in amount than those of the complainant.

That the defendant Florida Commercial Company has large interests in the property of defendant railway company, and has not been served with notice of this motion.

That from the deponent's knowledge of the views and interests of the said defendants in the matters involved in this litigation he avers that they will strenuously resist the granting of the motion of complainant for receiver and injunction as prayed in the bill, and will desire to have reasonable time and opportunity to answer and respond to the allegations of the bill affecting the matters of the said motion, and in reference to themselves and their interests in said property.

That the interests of the complainant and the various defendants to said bill are in many respects different and adverse, and deponent submits that each of said interests should be represented and heard upon the matter affecting them so greatly as the taking of possession
of this large property from the defendant company and plac-
167 ing it in the hands of a receiver of the court at the instance of the complainant holding a mere claim to a small minority of stock.

That this deponent further avers that the defendants to said bill have a full and meritorious defense on the merits to the matters and things charged and alleged in said bill, and can make a full and complete showing as to the charges of mismanagement made in

said bill, and will do so if sufficient time is given to them to get up the data and information necessary to make such defense; and deponent, upon his knowledge of the affairs of said defendant company, denies that there has been any such mismanagement or misappropriation of the funds and property of the said railway company, as are charged in said bill, or that there has been any fraudulent management in connection with the affairs of said defendants referred to in said bill, and that detailed accounts can and will be furnished to show this to be true upon reasonable opportunity being given them for collecting and stating such matters and accounts.

That many of the books and accounts are now at the office of the company in the city of New York, reference to which is necessary to properly answer said bill, and it will take about thirty days to make up a full answer of all the matters in said bill.

That the bill shows that complainant company claims to have long been aware of the matters complained of in the bill, and for at least a year and a half have been preparing the alleged data for the charges in said bill, and which it seeks to force defendant to answer within so short a time, and this application is made upon a mere claim for stock, arising out of no contract between complainant and the defendant railway company, and no actual stockholder, bondholder or lienholder of the defendant railway company joining in the application, and no danger being alleged or shown of any immediate loss of or injury to the property of defendant
168 railway company, and none such in fact exists, nor any immediate necessity for the granting of a receiver without adequate time for the defendant railway company to show cause against the same.

CHARLES C. DEMING.

Sworn to and subscribed before me this 11th day of July, A. D. 1892.

G. D. ACKERLY, [SEAL.]
*Notary Public, State at Large.*

[Endorsed:] In U. S. circuit court, northern district of Florida. The American Construction Co. *vs.* The Jacksonville, Tampa and K. R'y Co. *et al.* Affidavit of Charles C. Deming. Filed July 11, 1892. Philip Walter, clerk.

169 STATE OF FLORIDA, } *ss:*
*County of Duval,* }

T. M. Day, Jr., being duly sworn, deposes and says that he resides in Jacksonville, Florida, and for some time past has represented the Jacksonville, Tampo and Key West Railway Company, as attorney in the litigation of that company in Florida; that a notice of a motion for the appointment of a receiver and for an injunction and restraining order in the case of the American Construction Company *vs.* The Jacksonville, Tampa and Key West Railway Company

*et al.*, in the circuit court of the United States for the northern district of Florida, was served on him between seven and eight o'clock in the evening of Wednesday, July 6th, 1892, and that at that time R. B. Cable, general manager of the said company, was at Pablo Beach, Florida, from which he returned on the following morning; that none of the executive officers of the said railway company were then in the State of Florida; that the deponent informed the said general manager of the service upon him at once upon his arrival at the office of the said railway company in Jacksonville; that deponent was not instructed to appear in the suit, and was not retained therein until the arrival of Charles C. Deming, vice-president of the said railway company, on the afternoon of Saturday, July 9th; that at the time deponent was served with the notice of said cause he was not attorney of record of said
170 company in said cause, and was not authorized to act for the said railway company until the said Saturday afternoon.

T. M. DAY, JR.

Sworn to and subscribed before me this 11th day of July, A. D. 1892.

ROLAND WOODWARD,
*Notary Public.* [SEAL.]

[Endorsed:] In U. S. circuit court, northern district of Florida. The American Construction Co. *vs.* The Jacksonville, Tampa and K. R'y Co. *et al.* Affidavit of T. M. Day on motion for continuance. Filed July 11, 1892. Philip Walter, clerk.

171 MONDAY MORNING, *July 11th*, 1892.

Court met pursuant to adjournment.

Present: The Honorable Chas. Swayne, district judge; Jos. N. Stripling, U. S. attorney; L. R. Bradley, deputy marshal; Philip Walter, clerk.

Court was opened in due form by the crier.

AMERICAN CONSTRUCTION COMPANY
*vs.*
JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY.

This cause coming on this day on the motion of complainants for a receiver, &c., and defendants moving for further time—

It is ordered that the motion be continued until July 28th, 1892, at ten o'clock a. m.

172 In United States Circuit Court, Fifth Circuit, in and for Northern District of Florida. In Chancery.

AMERICAN CONSTRUCTION COMPANY
*vs.*
JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY, FLORIDA CONSTRUCTION COMPANY, *et al.*

The complainant and its solicitors and counsel of record in the above-stated cause will please take notice that on Thursday, July

28th, A. D. 1892, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, the defendant The Florida Construction Company, appearing specially only for the purpose of objecting to the jurisdiction of the court, will move to dismiss the bill of complaint as against it in the above-entitled cause on the ground that said defendant is not a citizen or resident of the said district or the State of Florida, and said court has no jurisdiction of said defendant in said cause.

COOPER & COOPER,
*For the Motion.*

STATE OF FLORIDA,
*Northern District of Florida, County of Duval.*

Before me personally appeared E. B. McBride, who, being sworn, deposes and says that he served the foregoing notice by leaving a true copy thereof at the office of H. Bisbee, solicitor for the complainant The American Construction Company in the above-stated cause, on Wednesday, July 27th, A. D. 1892.

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E. B. McBRIDE.

Sworn to and subscribed before me this 27th day of July, A. D. 1892.

EDWIN W. VAIL,
[SEAL.] *Notary Public, State of Florida.*

[Endorsed:] In circuit court of U. S., fifth circuit, in and for northern district of Fla. In chancery. Am. Construction Co. *vs.* J., T. & K. W. R'y Co. *et al.* Filed this 27 day of July, A. D. 1892. Philip Walter, clerk, by Jno. S. Driggs, dep. clerk. Notice of motion of Fla. Construction Co. Cooper & Cooper, for motion.

174 In United States Court, Fifth *Court* in the Northern District of Florida. In Chancery.

AMERICAN CONSTRUCTION COMPANY
*vs.*
JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY *et al.*

Now comes The Jacksonville, Tampa and Key West Railway Company, defendant, and in response to order to show cause why receiver should not be appointed on the bill of complaint in above-entitled cause, shows as follows:

I. That a receiver of the property of said defendant railway company has been appointed by this honorable court in the suit of the Pennsylvania Company for the Insurance of Lives and Granting of Annuities, as trustee for bondholders; against said defendant railway company, and said receiver being appointed at the suit of a complainant having a lien and right of possession on default paramount, superior and prior to any right of possession of the stockholders or at the suit of a stockholder or of the defendant railway company, a receiver cannot be appointed at the suit of an alleged

stockholder, and the receiver appointed for trustee of bondholders be deprived of the possession to which said trustee has such prior right. It is prayed that the record in said suit of said Pennsylvania Company for the Insurance of Lives and Granting of Annuities on file in this court may be fully referred to herein.

175 II. That this court has no jurisdiction in this cause or to grant a receiver *pendente lite:*

1st. Because it does not sufficiently appear from the bill that the matter in controversy exceeds in value $2,000.

2d. Because it does not sufficiently appear from the bill that the 94th equity rule has been sufficiently complied with by complainant.

3d. Because the court cannot grant relief prayed in said bill without the presence of necessary defendants of whom the court has no jurisdiction.

4th. For other defects of jurisdiction apparent on the record, and said defendant railway company moves to dismiss said bill for want of jurisdiction.

III. Because the bill does not show a case which authorizes or requires the appointment of receiver *pendente lite* on application of complainant.

IV. Because said defendant railway shows by the affidavits filed in its behalf herein that no cause exists to authorize or require the appointment of such receiver on application of complainant.

V. And such receiver should not be granted for other grounds — the foregoing and appearing on the face of the record, and the injunction should be dissolved.

COOPER & COOPER,
T. M. DAY,
*Solicitors and Counsel for J., T. & K. W. R'y Co., Defendant.*

[Endorsed:] In circuit court of U. S., fifth circuit, in and for northern district of Florida. In chancery. American Construction Co. *vs.* J., T. & K. W. R'y Co. *et al.* Filed this 28th day of July, A. D. 1892. Philip Walter, clerk, by Jno. S. Driggs, dep. clerk. Response to order to show cause, etc. Cooper & Cooper, sol's for J., T. & K. W. R'y Co.

176 Circuit Court of the United States, Northern District of Florida.

AMERICAN CONSTRUCTION COMPANY
*against*
JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY *et al.*

UNITED STATES OF AMERICA,
*Northern District of Florida, City of Jacksonville,* } *ss:*

Charles C. Deming, filing this affidavit in behalf of said defendant railway company, but in nowise appearing in the cause, or waiving any objection to the jurisdiction of the court of himself or any

other defendant, being duly sworn, says he is vice-president of the railway company above named, and has been such vice-president since March, 1891, and he is also secretary of said company, and has been for seven years; and that he is familiar with its affairs.

The American Construction Company was a stockholder of the former Jacksonville, Tampa and Key West Railway Company, one of the constituent companies which, by consolidation, formed the railway company, defendant, but is not a stockholder of said defendant railway company. The agreement of consolidation provides that the stock of the then existing railway company "shall be converted" into shares of the consolidated company, "to be exchanged share for share;" but the American Construction Company has never presented its shares in the constituent company for exchange
177 under that provision; has never demanded the issue of stock of the railway company, defendant, in exchange for its stock in the constituent company aforesaid, and has never in any way exercised or sought to exercise its right of exchange under said agreement.

Deponent makes this statement after having read the affidavit of Mr. Pennington in this case. Mr. Pennington never demanded from him the issue of any stock of the railway company defendant to the American Construction Company. He did ask to have stock issued to Mason Young individually on account of stock held by him individually in one of the constituent companies.

The American Construction Company, as deponent is informed and believes, is now and always has been chiefly composed of Mason Young, James H. Young, Alfred Bishop Mason and Edward G. Mason.

In the contract which is referred to in the bill herein, which is dated December 15th, 1883, it is agreed that the Florida Construction Company is to make James H. Young and Alfred Bishop Mason two of its directors, and at the February meeting, meaning the February meeting of 1884, of the Jacksonville, Tampa and Key West Railway Company, Mason Young and Alfred Bishop Mason shall be chosen directors, and Alfred Bishop Mason made vice-president. During all the time since that agreement deponent has never heard of any one else being interested in the complainant company except said Youngs and Masons, unless possibly he may have been informed that Anderson & Howland, or one of that firm, being the successor firm to the firm of Anderson & Young, of which said Mason Young was a member, had some small interest in that company. James H. Young and Alfred Bishop Mason, in their bill of complaint lately filed in New York, and verified by them, state that they are large holders of the stock of said American Construction Company. Mason Young was, in 1887, the president of that
178 company, and I believe that he is still the president thereof.

Edward G. Mason, as appears in the verification of the bill herein, is the secretary of the company. The two Youngs are brothers, and the two Masons are brothers, and, as deponent is informed and believes, they together are all the directors of the complainant.

Shortly after the making of said contract of December, 1883, said Mason Young and Alfred Bishop Mason were made directors of the Jacksonville, Tampa and Key West Railway Company. The said Mason Young remained a director of the company until July 22d, 1892, when his resignation, tendered by letter to the secretary about June 20th, 1892, was accepted. The said Alfred Bishop Mason remained such director until April, 1889. The said James H. Young was a director of said railway company from the annual meeting in March, 1887, until March, 1891. The said Alfred Bishop Mason was made vice-president of the railway company in February, 1884, and remained such vice-president until May, 1886, when he became general counsel of the company, and continued as such until the 16th day of April, 1888, when he became second vice-president, and remained as such second vice-president until April, 1889, when his resignation was accepted; and during the period when he was second vice-president he was acting general manager. Mason Young became vice-president of said railway company in April, 1887, and continued as such vice-president until the annual meeting in March, 1891; and was acting general manager of the company for several months prior to December, 1890. The said James H. Young and Alfred Bishop Mason became directors of the Florida Construction Company in 1883; Alfred Bishop Mason continuing as such director until 1889, and James H. Young continuing as such
179 director until July 22d, 1892, when his resignation, tendered by letter to the secretary on or about July 7th, 1892, was accepted. That shortly after 1883 Mason Young became a director of the Florida Construction Company, and remained such until July 22d, 1892, when his letter of resignation, tendered to the secretary on or about June 22d, 1892, was accepted.

The said Mason Young and the said Alfred Bishop Mason have spent a great deal of their time in Florida, and there and elsewhere in connection with the affairs of the said railway company and the said construction company, and have been familiar with the affairs of the two companies, both of them, until 1889, and Mason Young since that date. From the time of the contract December, 1883, up to the present time, nothing of importance has been done in the affairs of these two companies without the knowledge of the said Mason Young, and up to December, 1890, nothing of importance was done in the affairs either of these companies without his approval. Since that time he has made some criticisms, chiefly relating to the methods of book-keeping. He has never, until the present month, so far as I know, objected finally to any important transaction or dealing with property, or acts of either of these companies or their officers. If it is intended to allege in the bill of complaint that the complainant is ignorant of the facts and circumstances relating to the business of the company from the year 1884 to the present time, the allegations are false, full knowledge having been had by Mason Young and others of his associates composing said American Construction Company, who are, as I am informed and believe, also its directors and officers.

The history of the enterprise which is the subject-matter of this

action, and of the relations between the Jacksonville, Tampa and Key West Railway Company, the Florida Construction Company, and the American Construction Company, as well as of the
180 relations between the individual defendants, are briefly as follows:

The Florida Construction Company was organized in 1881, for the purpose of building the Tampa, Peace Creek and St. John's River railroad. Considerable preliminary work in the way of surveys and a small amount of grading was done between the year 1881 and the spring of 1883. Work was seriously commenced in 1883, and the road finished from Jacksonville to Palatka in the year 1884. During this period the American Construction Company was organized for the purpose of building the Palatka and Indian River railroad from Palatka south. The American Construction Company graded and tied about thirteen miles of road south of Palatka and spent in the neighborhood of $115,000.

They applied to the Florida Construction Company to finish the line of the Palatka and Indian River road which they had contracted to build, and in the month of December, 1883, a contract was entered into between the American Construction Company and the Florida Construction Company, a copy of which is hereto annexed and made a part of this affidavit.

By the terms of this contract the Florida Construction Company undertook the building of the Palatka and Indian River road, and the American Construction Company was to receive 1,625 shares of the capital stock of the Florida Construction Company, and 3,333 shares of the capital stock of the Palatka and Indian River Railroad Company.

In pursuance of said contract the Florida Construction Company finished the road as far as Enterprise Junction, and continued its extension to Sanford, to which point it was finished and opened for operation in February, 1886. Besides the money required to build the roads large amounts were required for other necessary purposes of the railway companies, which were afterward consolidated
181 into the Jacksonville, Tampa and Key West Railway Company, one of the companies, by the consolidation of which the defendant railway company was formed. This money was obtained upon notes of the Florida Construction Company, endorsed by Robert H. Coleman, Mason Young and James H. Young. These notes were discounted by banks and other financial institutions in Connecticut, New York and Pennsylvania. As these notes fell due, they were renewed by issuing new notes bearing the same endorsements, many of them being renewed in this way for several years. The further history of these notes will be more particularly given hereafter.

During the spring of 1888, the said Alfred Bishop Mason and Mason Young, who had given special attention to the management and operation to the railroad in Florida, conceived the idea of acquiring possession of the Florida Southern railroad, and submitted their views in regard to the same to the directors of the Jacksonville, Tampa and Key West Railway Company. They were

authorized by the directors to enter into a preliminary negotiation with the Florida Commercial Company, which company at that time controlled the said Florida Southern Railway Company, and made a report to said board of directors recommending the purchase of a controlling interest in the stock, and a majority of the first-mortgage bonds of said railway company. The recommendations of said Mason and Young were accepted by the board of directors, and a contract referred to in the bill of complaint herein was afterwards and on or about the 24th day of September, 1888, entered into, whereby the defendant company became the purchaser of the controlling interest in said stock and bonds.

It was part of the plan suggested by Messrs. Mason and Young, and provided for in the said contract, that the mortgage securing the bonds of the Florida Southern Railway Company should
182 be foreclosed and the company reorganized, and the securities of the reorganized company substituted for those of the original company. All that was done in the making of this contract and in carrying it out was done upon the suggestion and with the approval of the said Mason and Young.

In the year 1891, when it became apparent to the officers and directors of the construction company and railway company that there were various matters of account between the two companies which, owing to the close relations between them, and the fact that the construction company substantially owned the railway company, subject to its debts, and the assets of the construction company were substantially in the railway company had not, up to that time, been settled, ought to be taken up and adjusted, said Mason Young at his own suggestion, and with the approval of the officers and directors of both these companies, for several months in the year 1891 made an exhaustive examination of the books and papers and accounts in respect to the business of the two companies and their relations to one another, being furnished with various transcripts, papers, and being aided by the auditor and other officers of the two companies. The official action in regard to this matter is shown on the records of the board of directors of the Jacksonville, Tampa and Key West Railway Company in the entry as to the meeting of April 2, 1891, at which the following resolution was adopted:

"Resolved, That Messrs. Deming and Young be appointed to adjust the accounts between this company and the Florida Construction Company, and report to this board with recommendations."

In October, 1891, Messrs. Young and Deming having finished their investigations, which were chiefly carried on by Mr. Young, a report was made and the accounts between the two companies were finally adjusted, the action taken being more particu-
183 larly shown by the following report of the meeting of the board of directors of the railway company of October 22, 1891.

A meeting of the board of directors of the Jacksonville, Tampa

and Key West Railway Company was held at the office of the company in the city of New York, on the 27th day of October, 1891.

Present—Messrs. Brown, Deming, Flagler and Young.

Mr. Young was appointed chairman of the meeting.

The committee appointed to adjust the account between this company and the Florida Construction Company submitted the following report:

"The committee appointed to adjust the account between the Florida Construction Company and the Jacksonville, Tampa and Key West Railway Company respectfully report that they have carefully examined the accounts between the two companies, and make the following recommendations:

"As compensation for damages caused by the delay of the Florida Construction Company in completing the road of the Jacksonville, Tampa and Key West Railway Company for one year after the time provided in the contract, it is recommended that interest on the first-mortgage bonds of the railway company up to January 1st, 1887, be remitted, and that interest on such coupons as accrued after that date should not be compounded, inasmuch as no demand for their payment had been made.

"The Florida Construction Company having failed to comply with its contract to provide terminal facilities at Jacksonville for the railway company compelled the railway company to rent terminal facilities at an annual cost of thirty-nine hundred dollars. It is suggested that this annual charge, being six per cent. on a valuation of sixty-five thousand dollars, be capitalized on a basis of fifty thousand dollars, and that the amount of fifty thousand dollars be allowed in the adjustment to the railway company.

184 "The items on the account and on the books of said railway company for payments made on account of the Indian River Steamboat Company should not be charged against the railway company, inasmuch as the stock of the Indian River Steamboat Company is owned by the construction company.

"Certain items charged on the ledger of the Florida Construction Company for land taxes, for interest on collateral trust bonds, for expenses in connection with the foreclosure of the Florida Southern Railway Company should be charged against the Jacksonville, Tampa and Key West Railway Company.

"The amount charged on the Jacksonville, Tampa and Key West Railway Company books against the De Land and St. John's River Railway Company should be assumed by and charged against the Florida Construction Company, inasmuch as the stock of the De Land and St. John's River Railway Company was owned by the construction company.

"Respectfully submitted,

"(Signed) MASON YOUNG,
"(Signed) CHARLES C. DEMING,
"*Committee.*"

And, upon motion duly seconded:

"Resolved, That the report be accepted and the committee discharged.

"Further resolved, That the recommendations be adopted and communicated to the board of directors of the Florida Construction Company, and, if concurred in by the Florida Construction Company, the auditor of this company be, and he hereby is, authorized and directed to adjust the account in accordance therewith."

The action of the board of directors of the railway company was communicated to the board of directors of the construction company and concurred in by said directors of said construction com-
185 pany, and thereupon the general auditor of the defendant railway company, who also had charge of the books of the Florida Construction Company, made his entries in accordance therewith, which resulted in the adjusted balance-sheet of September 30th, 1891. Upon this adjustment no interest was charged or allowed on either side of the account.

Prior to this adjustment, the books of the railway company and construction company did not correspond, owing to the fact that on one side or the other there were claims not yet allowed or determined, so that a comparison of this balance-sheet of September 30th, 1891, with any statements of account or trial balances, or the like prior to that date, would not be a comparison between different statements agreed upon and accepted on the part of both the railway company and the construction company. The adjustment there made was approved by said Mason Young, and, until the pending litigation in Florida and New York began during the present month, deponent has never heard that any one on account of the American Construction Company, or any one else, has ever objected to such adjustment. All parties in interest have, so far as deponent has ever known, or been informed, accepted that adjustment as final and satisfactory.

The complainant, in the statement of its bill that the net earnings of the defendant railway company were sufficient for several years past to pay interest on its bonds, taxes and its fixed charges, does not take into consideration the necessary and proper expenditures for the betterment, equipment and increase, and enlarged facilities for doing business by the said defendant railway company; and, when the proper deductions are made for such betterments, equipments and enlarged facilities, the allegations that the receipts were sufficient net, as alleged in the bill, are not true; but the facts are that large amounts of money have been necessarily borrowed for
186 these purposes by defendant company, thereby creating and increasing the large floating indebtedness. Nor does this complainant take into consideration the losses incurred in the operation of the Florida Southern railway from the 1st of January, 1889, to date, including the payment of coupons on said collateral trust bonds, amounting to about $375,000, which was properly chargeable against the defendant railway company, and which the defendant railway company has been obliged to pay.

That, at the time of entering into the contract between the Florida

Commercial Company and the Jacksonville, Tampa and Key West Railway Company, it is true, as alleged in the bill, that the board of directors of the defendant railway company and Florida Construction Company was substantially the same, and it is also true that at the same period the three persons, Alfred Bishop Mason, Mason Young and James H. Young, representing the American Construction Company, were also directors of the Jacksonville, Tampa and Key West Railway Company and of the Florida Construction Company. That such portion of the net earnings of the property as can be saved from the necessary purposes of the said defendant railway company for improvements, construction, betterments and increased facilities is forwarded to the treasurer in New York for the purpose of payment of coupons upon the bonds for which the defendant railway company is liable.

It is not true that the officers of the Florida Construction Company, by virtue of such office, have any control over the management of the affairs of the Jacksonville, Tampa and Key West Railway Company, but the officers of each of said companies respectively control the affairs of said several companies.

That of the floating indebtedness of said defendant railway company it is true that a large part consists of promissory notes of the defendant railway company, upon which said Mason Young,
187 James H. Young and Robert H. Coleman were endorsers, and the said Mason Young and James H. Young failing and refusing to pay any part of the same, and the said defendant railway company being unable to pay the same, the said notes were protested, and after protest were taken up by Robert H. Coleman, who thereby became subrogated to the collateral securing the said notes, and entitled to hold the same as against said defendant railway company, and that all of said promissory notes were valid obligations of said defendant railway company; that others of said promissory notes were notes made by the defendant railway company to said Robert H. Coleman for moneys advanced by him to said railway company to pay its necessary expenses and secured by collateral deposit of certain consolidated mortgage bonds, and are also valid obligations of said railway company.

That with reference to the alleged apparent increase of the floating indebtedness of the defendant railway company from December 31, 1888, to June 30, 1891, this deponent says that until June 30, 1891, the general books as to financial management were kept in New York city, while those relating only to the operating management were kept in Jacksonville in the office of the defendant railway company, and that on June 30, 1891, the books of the two offices were consolidated, and a large part of the apparent increase is caused by carrying into one set of books the accounts which had previously been kept in the two sets separately with the entire knowledge, assent and approval of the said representatives of the complainant company.

That the amount of $10,000 shown December 31, 1888, upon the balance-sheet, as bills payable on the books in Jacksonville was incurred in the ordinary operating expenses, and that the amounts of

$243,702.98 shown by the balance-sheet June 30, 1891, includes obligations incurred in the purchase of a large amount of necessary equipment, and that the amount of floating indebtedness
188 shown by the balance-sheet June 30th, 1891, should be $1,758,349.75, and arose from the consolidation of the two sets of books, as hereinbefore stated; and that, in fact, there is no actual increase between the two last-mentioned dates of said bills payable.

Affiant further states that he knows that a majority of the said directors of the defendant railway company have a beneficial interest in the stock of said defendant railway company.

That the Indian River Steamboat Company was organized for the purpose of connecting with and supplying business to the Jacksonville, Tampa and Key West Railway Company, and it was intended that the said defendant railway company should own the stock of the said steamboat company, but a question having arisen, suggested by Mason Young, as to whether, under the laws of Florida, the stock of said steamboat company could be held by the said defendant railway company, the stock was taken in the name of the Florida Construction Company; but the boats were run and operated in connection with and for the benefit of the defendant railway company. That the said defendant railway company has advanced from time to time to the said Indian River Steamboat Company funds necessary for the purposes of said steamboat company, and has received portions of the same back from the said steamboat company out of its earnings, and subsequently charged up to the Florida Construction Company any deficiency, and also the cost of construction and equipment of the steamboats of said steamboat company.

That the facts in reference to the Jupiter and Lake Worth Railway Company are substantially the same as above stated in reference to the Indian River Steamboat Company.

That all of the said transactions in reference to the said steamboat company and the Jupiter and Lake Worth Railway Company
189 were with the full knowledge and assent of the said representatives of the American Construction Company. Deponent further avers that for a long time prior to the 1st of October, 1889, a very large amount of the notes of the Florida Construction Company had been issued and discounted by many banks and financial institutions in Connecticut, New York and Pennsylvania; that by far the largest amount of said notes had been placed by said Coleman amongst financial institutions in Pennsylvania; that James H. Young and Mason Young, the representatives of the complainant in the board of directors of said construction company, were co-endorsers on said notes with said Coleman; that said notes were renewed, from time to time, by the issuance of new notes with same endorsements, many of these being renewed in this manner for several years. That between the 1st day of June and the 1st day of October, 1889, the banks holding said notes were demanding payment of the same as they matured, urging, as a cause for their unwillingness to renew, that there had been recent failures of construc-

tion companies brought to the attention of their directors, and that construction-company paper was not favorably regarded by their boards. Neither the construction company nor their endorsers were prepared to meet these notes as they matured, and in various conferences between deponent and said endorsers, and between said endorsers themselves, this state of facts led to offering the notes of the railway company in renewal of said construction notes; that, thereupon, notes of the defendant railway company were endorsed by the said Youngs and said Coleman, and such substitution effected; and that said exchange of said notes was not made for the purpose of relieving the said Coleman from his liability as endorser and surety upon a bankrupt corporation as alleged in the bill, but was made for the purpose of enabling the said endorsers to continue the
190 loans on which they were liable, and which they were not prepared to pay. That, so far as the allegations in the bill imply that the defendant Coleman has received any personal or financial benefit from his connection with said company, deponent avers that the contrary is the case. Said Coleman has been obliged to take up notes of the company, which holders thereof refused to renew; he has been obliged to advance large sums to the company for its necessary purposes, taking merely the obligations of the company therefor without collateral; he has received no security for any of the obligations of the company to him, except such as have been offered to banks and financial institutions, and that he now holds in return for his large personal advances no security except consolidated mortgage bonds, and that for many of his advances he holds no collateral security whatever; that during his connection with said company from the year 1883 to date he has received no compensation for his services and no return for his many and large incidental expenditures in connection therewith.

That during the financial stringency of 1890 he fairly implored the co-endorsers, James H. Young and Mason Young, to protect their endorsements ratably with himself, but that, notwithstanding the fact that said Youngs are reputed to be rich and able to respond, they did not assist him, alleging no other reason than their poverty and inability to meet these obligations, and said Coleman was obliged to mortgage his property to meet these notes as they matured and protect his honor. That his large business interests at the North are actually suffering from want of the funds which he has been obliged to advance as aforesaid, and that it was for the purpose of enabling him to avail himself of the collateral attached to the notes he held that authority was given to him to purchase the bonds at eighty-five cents on the dollar. That although said authority was given to him in March of this year, he has only availed him-
191 self of it to the extent of about $110,000. That a very large amount of the notes taken up by the said Coleman were collateral notes, with power to sell collateral, and said Coleman had the right and power to sell said bonds in open market and buy them at any price which might be offered; that his interests in the company, and his anxiety to protect it against a forced sale of its securities, induced him to forego his legal right. That, by special action

of the board of directors of the Jacksonville, Tampa and Key West Railway Company, the treasurer was authorized to borrow such amounts of money as might be required for the purposes of the company, and secure such loans with consolidated mortgage bonds at eighty cents on the dollar, and that the notes held by the said Coleman were thus so specifically authorized.

And deponent denies that such actions and doings were not consented to by the complainant, and were done without complainant's knowledge, and avers and alleges that all of the said acts were done with the full knowledge, consent and approval of complainant's representatives, the said Youngs, and that on each and every of said substituted notes the said Youngs were endorsers.

Deponent further avers that, at the time such substitution was affected, the accounts between the said construction company and said railway company were unadjusted, but that the said construction company claimed an existence of an indebtedness to it from said railway company of a very large amount, aggregating many hundreds of thousands of dollars which the construction company had expended in behalf of said railway company beyond the requirements of its contract, and which had otherwise accrued from said railway company to said construction company.

That the principal assets of the construction company were the stock and bonds of the railway company, and default in the
192 payment of the notes of the construction company would have been fatal to the interests of the railway company.

Affiant further states that no request by complainant was made to the defendant railway company to the best of affiant's knowledge, for any statement of the accounts or business of said railway company, or for the issue of stock to it by the defendant railway company, but that a request was made by Mason Young to examine the books of the defendant railway company, and he was given written authority so to do, and did in fact examine and inspect the same, and continued his examination from time to time over a period of several months.

That complainant never made any request for statement of the accounts, but the said Mason Young did from time to time make requests for such statements, and that they were furnished to him. That Mr. J. E. Starke, who has occupied the position of general auditor to the defendant railway company since the 1st day of March, 1890, was recommended for the position by Mr. Mason Young, the representative of the complainant, who introduced him to the other officers and directors of the said defendant railway company, and requested his employment; and that, at all times since the appointment of said Starke as general auditor, said Young has represented to deponent that he was well satisfied with his method of conducting his department.

That affiant further states that at the time the said balance-sheets of the Florida Construction Company were made, December 1, 1888, and October 1, 1889, the accounts between the said construction company and the said defendant railway company had not been adjusted, and the said balance-sheets only showed the claim of the

construction company against the defendant railway company; that the alleged balance-sheet on Schedule A of February
193 28th, 1891, showing alleged balance of $225,171.62, was never issued by any officer of said construction company. The same is true of the alleged balance-sheet of July 1st, 1891, showing a balance of $325,905.71.

Deponent denies that on June 30th, 1891, the Jacksonville, Tampa and Key West Railway Company paid the sum of $31,340 for interest on bonds of the Atlantic Coast, St. John's and Indian River Railway Company, or paid to the Florida Construction Company any sum whatever for same, but says in fact that the Florida Construction Company advanced $21,000 to pay said coupons, and charged it in the account of the Jacksonville, Tampa and Key West Railway Company, which, under the consolidation, was responsible for the coupons of that portion of the consolidated lines.

Deponent says that it is true that Robert H. Coleman holds promissory notes of the said defendant railway company to the amount of $1,564,053.54, which represents advances and loans to the said defendant railway company, and notes of the said defendant railway company taken up by the said Coleman, which were endorsed by the said Mason Young, James H. Young and Robert H. Coleman, the said advances and loans of the said Coleman being to pay for construction, maintenance, equipment and other expenses of the said defendant railway company.

This deponent says that it is untrue that there is any discrepancy between the amount of the floating indebtedness of the said defendant railway company, as shown by the books, and the actual floating indebtedness as it exists. This deponent further says that the defendant railway company has a general auditor under whose supervision the accounts of the said company are audited and correctly kept, and that financial statements and reports are made
194 monthly and sent to the executive office, and any additional reports when required, and these reports are now on file in the office in New York, and open to inspection of any member of the board of directors; that an annual report of the earnings and expenses, and also a financial report, were made to the board of directors, and were on hand and open to the inspection at the last meeting of the stockholders; that deponent denies that the accounts, as kept, and the financial reports, as made to the State of Florida, and otherwise, cannot be reconciled, or are untrue, but says that the said accounts and reports are correctly kept and are true. Deponent denies that there has been any fraudulent management or negligence in the keeping of the accounts or in the financial management of the said defendant railway company, and denies that its stocks or securities have ever been depreciated by any failure of the financial management from the method of keeping the said accounts.

Deponent further denies that there are large claims outstanding due the defendant railway company other than the said account with the Florida Construction Company, and avers that there are only two other accounts due the defendant railway company of any considerable amount, and that these are not available assets.

Deponent further says that the officers of defendant railway company have made every effort to sell the said consolidated mortgage bonds of said defendant railway company, and were informed by brokers in Philadelphia, who negotiated a previous issue of its bonds by Drexel & Co., the Pennsylvania Company for Insurances on Lives and Granting Annuities, who were the trustees of the mortgage, and by other financial concerns who are in the habit of negotiating bonds of this character, that it would be impossible to float an issue of these bonds at any higher price than eighty-five cents on
195 the dollar, and that all parties to whom the financial officers applied to make a negotiation of the bonds at this price declined to undertake the matter; that under the resolution of the board of directors referred to in the bill of complaint, not only the said Coleman was authorized to purchase these bonds at eighty-five cents on the dollar, but the same terms were extended to any holder of the company's obligations, of which fact said Mason Young was fully advised.

This deponent further avers that the statement in complainant's bill showing net earnings on June 30, 1890, and June 30, 1891, and April 30, 1892, does not take into account the amounts paid out for taxes and interest, betterments in equipment and construction, and that large sums in addition to the said net earnings were necessarily expended for the purposes above mentioned.

This deponent denies, to the best of his knowledge, information and belief, that the complainant has ever made any demands on the defendant railway company, and expressly denies that any such demand has been made upon himself for the issue of certificates of stock of the said defendant railway company.

This deponent denies that the accounts and affairs of the defendant railway company have been managed in the interests of the Florida Construction Company and its stockholders, and not in the interests of the stockholders and directors of the defendant railway company, as alleged in the bill, but says that its affairs have been managed in the interest of the creditors and stockholders of the said defendant railway company.

That during the last five years James H. Young, one of the representatives of the complainant, has been in the habit of visiting the office of the defendant railway company as often as once
196 a week, and to the best of deponent's recollection has never made any criticisms or suggestions as to the accounts between the said defendant railway company and the said construction company; that he has at all times expressed his admiration and respect for the defendant Coleman, and has recognized the indebtedness of himself, and all others interested in the property, to the said Coleman for his financial support and devotion to the company's interest.

That the said Alfred Bishop Mason, another of the representatives of the complainant, has given no attention to the affairs of the defendant railway company for the last three years, and, although deponent has frequently seen and conversed with said Mason during

this period, he has not alluded in any way to the accounts or b
ness of the two companies.

That, although this suit is brought in the name of the Americ
Construction Company, deponent believes and avers that the r
instigator of this proceeding is the said Mason Young, from wh
deponent believes and avers that the complainant received all t
information and statements of accounts upon which the bill is base

That since the month of March, 1891, the date at which sa
Mason Young ceased to be an officer of the defendant railway co
pany, he has been engaged in exhaustive examinations of accoun
and preparing himself for this attack upon the defendant railwa
company, and deponent believes and avers that this proceeding i
brought for the sole purpose of casting discredit on the accounts o
the said companies, which the said Mason Young and James H
Young might use as a defense to the suits which the said Coleman wil
be obliged to institute against said Youngs to enforce their liabilit
as endorsers upon the notes of the said railway company, which th
said defendant railway company could not pay at maturity, an
which the said Coleman has been obliged to take up in honor o
his endorsement.

197 Deponent denies all allegations of negligence and mis
management of the offices of the defendant railway company
as charged in the bill, and avers that he is advised by the counse
for the defendant railway company that there are no grounds fo
granting the relief prayed for in the bill.

CHAS. C. DEMING.

Sworn to and subscribed to before me this 28th day of July, 1892
GEO. J. ZEHRBAUER,
[SEAL.] *Notary Public, State at Large.*

198 EXHIBIT A.

Articles of agreement, made at the city of New York, the 15t
day of September, A. D. 1883, by and between the Florida Con
struction Company, a corporation organized and existing under th
laws of the State of New Jersey, and the American Construction
Company, a corporation organized and existing under the laws o
the State of Illinois, witnesseth :

First. The American Construction Company is to have transferre
to the Florida Construction Company eighty-eight and three-fourth
(88¾) per centum of the capital stock of the Palatka and Indian
River Railway Company, and all the bonds of the said railway com
pany (to be issued at a rate not exceeding $15,000 per mile), and i
to subscribe $162,500 to the capital stock of the Florida Construc
tion Company, all monies arising from such subscription to be used
in grading south of the present grade of said railway company.

Second. Out of the subscription of $162,500 the Florida Construc
tion Company is to issue and deliver to the American Construction
Company, for money already expended by it, $115,500 out of its
full-paid capital stock, and is also to issue $25,000 of the first-mort

gage bonds of the Jacksonville, Tampa and Key West Railway Company, dated January 1st, 1884, and issued at a rate not exceeding $15,000 per mile.

Third. The Florida Construction Company is to make James H. Young and Alfred Bishop Mason two of its directors.

199 Fourth. At the February meeting of the Jacksonville, Tampa and Key West Railway Company, Mason Young and Alfred Bishop Mason are to be chosen directors, and Alfred Bishop Mason made vice-president.

Fifth. All necessary and proper papers for carrying out this agreement are to be executed and delivered by the parties hereto, and by the two railroad companies aforesaid.

In witness whereof, the parties hereto, to wit, the Florida Construction Company, of New Jersey, and the American Construction Company, of Illinois, have caused their respective seals to be affixed, and the same attested by the respective presidents and secretaries the day, the year and place first aforesaid.

200 AMERICAN CONSTRUCTION COMPANY
*vs.*
THE JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY *et al.*

STATE OF FLORIDA, *County of Duval,* } *ss:*

James E. Starke, being duly sworn, deposes and say- that he is general auditor of the Jacksonville, Tampa and Key West Railway Company; that he has read the foregoing affidavit of Charles C. Deming, verified the 28th day of July, 1892, and that as to the matters therein stated regarding the accounts and financial statements, said affidavit is true.

Deponent further says that he has never been applied to by the complainant for any information as to the accounts of the defendant railway company; that he has been asked by Mr. Mason Young, at various times, for transcripts of accounts and statements of various kinds, and has always furnished what was asked for, and, so far — deponent knows, to the said Young's entire satisfaction. That he has never refused any information in regard to the accounts either of the Jacksonville, Tampa and Key West Railway Company,

201 or of the Florida Construction Company, to any one representing or interested in the American Construction Company, so far as he knows.

J. E. STARKE.

Sworn to and subscribed before me this 28th day of July, A. D. 1892.

GEO. J. ZEHNBAUER,
*Notary Public, State at Large.*

[SEAL.]

[Endorsed:] U. S. circuit court, northern dist. of Fla. American Construction Co. *vs.* J., T. & K. W. R'y Co. Affidavits of C. C. Deming and J. E. Starke. Filed July 28, 1892. Philip Walter, clerk, by Jno. S. Driggs, dep. clerk.

202 In United States Circuit Court, Fifth Circuit, in and for the Northern District of Florida.—In Chancery.

AMERICAN CONSTRUCTION COMPANY
*vs.*
JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY, FLORIDA CONSTRUCTION COMPANY *et al.*

The Florida Construction Company appearing specially only for the purpose of objecting to the jurisdiction of the court, moves to dismiss the bill of complaint as against it in the above-entitled cause, on the ground that said defendant is not a citizen or resident of the said district or State of Florida, and said court has no jurisdiction of said defendant in said cause.

COOPER & COOPER,
*For the Motion.*

[Endorsed:] In circuit court of U. S., fifth circuit, in and for northern district of Fla. In chancery. American Construction Co. *vs.* J., T. & K. W. R'y Co. *et al.* Filed this 27th day of July, A. D. 1892. Philip Walter, clerk, by Jno. S. Driggs, dp. clerk. Special appearance, etc., Fla. Construction Company. Cooper & Cooper, for motion.

203 In United States Circuit Court, Fifth Circuit, in and for the Northern District of Florida.—In Chancery.

AMERICAN CONSTRUCTION COMPANY
*vs.*
JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY *et al.*

It is ordered, on motion of The Florida Construction Company, defendant in said cause, that the bill of complaint therein be, and is hereby, dismissed as to the said Florida Construction Company, it not being a resident of said district.

CHAS. SWAYNE, *Judge.*

[Endorsed:] In circuit court of U. S., fifth circuit, in and for northern district Fla. In chancery. American Construction Co. *vs.* J., T. & K. W. R'y Co. *et al.* Filed this 2d day of August, A. D. 1892. Philip Walter, clerk, by Jno. S. Driggs, dp. clerk. Order dismissing bill as to Fla. Construction Co.

204 Circuit Court of the United States, Northern District of Florida.

THE AMERICAN CONSTRUCTION COMPANY
*vs.*
THE JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY *et al.* } In Chancery.

The clerk will please enter our appearance for the Jacksonville, Tampa and Key West Railway Company in the above-entitled cause.

COOPER & COOPER,
T. M. DAY, JR.,
*Solicitors for Jacksonville, Tampa and Key West Railway Co.*

[Endorsed:] U. S. circuit court, northern dis. of Fla. American Construction Co. *vs.* J., T. & K. W. R'y Co. Appearance for J., T. & K. W. R'y Co. Filed Aug. 1, 1892. Philip Walter, clerk. Cooper & Cooper, T. M. Day, solicitors for J., T. & K. W. R'y Co.

205 In the United States Circuit Court, Fifth Circuit, in and for the Northern District of Florida. In Chancery.

AMERICAN CONSTRUCTION COMPANY
*vs.*
JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY *et al.* }

C. C. Deming, appearing specially only for the purpose of objecting to the jurisdiction of the court, moves to dismiss the bill of complaint as against him, the said C. C. Deming, in the above-entitled cause, on the ground that said defendant is not a citizen or resident of the said district or State of Florida, and the said court has no jurisdiction of said defendant in said cause.

COOPER & COOPER,
*For the Motion.*

[Endorsed:] In circuit court of U. S., fifth circuit, in and for northern district of Fla. In chancery. American Construction Co. *vs.* J., T. & K. W. R'y Co. *et al.* Filed this 30 day of July, A. D. 1892. Philip Walter, clerk, by Jno. S. Driggs, dep. clerk. Motion and special appearance, C. C. Deming. Cooper & Cooper, for motion.

206 In United States Circuit Court, Fifth Circuit, in and for Northern District of Florida. In Chancery.

AMERICAN CONSTRUCTION COMPANY
*vs.*
JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY *et al.* }

It is ordered, on motion of C. C. Deming, defendant, in said cause, that the bill of complaint therein be, and is hereby, dismissed as to the said C. C. Deming, he not being a resident of said district.

CHAS. SWAYNE, *Judge.*

[Endorsed:] In circuit court of U. S., fifth circuit, in and for northern district of Fla. In chancery. American Construction Co. *vs.* Jacksonville, Tampa and Key West R'y Co. *et al.* Filed this 2 day of August, A. D. 1892. Philip Walter, clerk, by Jno. S. Driggs, dep. clerk. Order dismissing bill as to C. C. Deming.

207 Circuit Court of the United States, Northern District of Florida.

AMERICAN CONSTRUCTION COMPANY
*vs.*
JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY *et al.* } In Equity.

This cause came on to be heard on the 28th day of July, 1892, on a motion for the appointment of a receiver, upon the bill and affidavits and exhibits in support thereof, and affidavit of Charles C. Deming, on behalf of defendant company, and was argued by counsel. On consideration thereof it is ordered, adjudged and decreed that the said motion be, and the same is hereby, granted as follows:

1st. That Mason Young, Esq., is hereby appointed receiver of all the property, equitable interests, things in action, effects, moneys, receipts, earnings, rights, privileges, franchises, immunities of the said defendant railway company, mentioned and described in the said bill of complaint, wheresoever the same or any part thereof may be situated, with all the powers, rights, privileges and duties of receivers in like cases, and with the powers, rights and duties as herein set forth.

2d. The said receiver shall forthwith enter upon and take possession of all and singular the said properties, interests, things in action, effects, moneys, receipts and earnings, rights, privileges, franchises and immunities, and have, hold, use, operate and exercise the same, and to hold, operate and manage the railroads of the said defendant company, with its appurtenances, until the further order of this court.

208 The said receiver is hereby ordered to enter upon and take possession of all and singular the railroad described in the bill of complaint as lately the property of the Florida Southern Railway Company, and recently, as appears from the said bill, sold and purchased by the said defendant company The Jacksonville, Tampa and Key West Railway Company, and all of the rights, privileges, franchises, immunities, receipts and earnings belonging or appertaining thereto, until the further order of this court.

And it is further ordered that the said defendant railway company, its officers and agents, and all persons who may have possession of any of the said railroad properties or appurtenances, or rights and privileges thereof, deliver over to the said receiver all and every part of the properties, interest, effects, moneys, receipts and earnings, and all the books, vouchers and papers touching the operation of the said railroads, or either of them, and all books of account and vouchers touching or relating to the moneys, finances and assets of

the said defendant company, including the stock books and stock ledgers of the said defendant company.

3d. It is further ordered that the said receiver as aforesaid be and is hereby authorized and empowered to defend and continue all suits brought by or against the said Jacksonville, Tampa and Key West Railway Company, whether before or after the appointment of the said receiver, and whether in the name of the said company or otherwise, to defend all suits brought against him as such receiver, or affecting his receivership; and is hereby authorized and empowered to bring all such suits in the name of the said company, or in the name of the said receiver, as he may be advised by counsel to be necessary and proper in discharge of the duties of his office, and for acquiring, securing and protecting the assets, legal and equitable, the franchises and all the rights of the said com-
209 pany and of the said receiver, and for securing and protecting all the lands, land grants and land reservations of the said company, it being the intention of this order to authorize, empower and require the said receiver to proceed to collect all the accounts, claims and demands of every nature and kind now due or which may afterwards accrue due to the said Jacksonville, Tampa and Key West Railway Company; and for the purposes of his receivership he is hereby authorized to employ counsel and to pay them reasonable compensation, such compensation, however, to be subject to the approval of the court in final settlement of the receiver's accounts.

4th. It is hereby ordered, adjudged and decreed that the said Jacksonville, Tampa and Key West Railway Company, and all its officers, agents, servants and all persons whomsoever, who may be in the possession of the properties of the Jacksonville, Tampa and Key West Railway Company, including the railroad properties and its appurtenances lately owned by the Florida Southern Railway Company be, and they are hereby, enjoined from interfering with the possession, control, management and operation of the said properties herein mentioned, and from in any way obstructing the exercise of any of the rights, powers and privileges herein conferred upon the said receiver, or the performance of any of the duties hereby imposed upon him. It is ordered that the restraining order made and filed on the 6th day of July, 1892, in this cause be continued until the further order of this court.

5th. It is hereby ordered that out of the moneys and income and revenues coming into his hands from the said properties or other assets of the said Jacksonville, Tampa and Key West Railway Company, the said receiver pay all taxes legally imposed upon the said properties by State and municipal authorities, and is hereby authorized to pay for such repairs, supplies, material, labor,
210 services as shall in his judgment be necessary or proper to conserve and operate the said railroads and other properties aforesaid.

And he, the said receiver, is hereby also authorized to pay all indebtedness of the said railroad company heretofore incurred for expenses of operation, including repairs, supplies, material, labor and

services, which indebtedness has been incurred within the period of six months next preceding the date of this order.

6th. The said receiver shall cause to be kept just, full and true accounts of his receipts and disbursements, and shall report his doings to this court with such accounts from time to time. And the said receiver may apply to this court for instructions, and for such further orders in respect to his actions as such receiver as may, from time to time, be necessary or advisable.

And said receiver shall make and file in this court as early as practicable a schedule or inventory of all the properties and assets of the said defendant company.

7th. The said receiver shall take oath to faithfully perform his duties, and with one or more sureties shall execute to the clerk of this court, for the benefit of all concerned, a bond, to be approved by the judge of this court, in the sum of fifty thousand dollars conditioned for the faithful performance of his duties hereunder, and that he will in all respects obey the orders of this court as such receiver.

CHAS. SWAYNE,
*U. S. Judge.*

Done this 4th day of August, 1892.

[Endorsed:] Filed August 4th, 1892. Philip Walter, clerk, by Jno. S. Driggs, dep. clerk.

211 Circuit Court for Fifth Circuit of United States, Northern District of Florida.

THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND FOR GRANTING ANNUITIES, Complainant,
*vs.*
THE JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY, Def't.

The above-named The Pennsylvania Company for Insurances on Lives and Granting Annuities, feeling itself aggrieved by the decree rendered and entered in the above-entitled cause on the fourth day of August, A. D. 1892, doth enter its appeal from said decree to the circuit court of appeals for the fifth judicial circuit of the United States, and it prays that this, its appeal, may be allowed and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the circuit — of appeals for the fifth circuit of the United States.

R. H. LIGGETT,
*Of Counsel for the Pennsylvania Company for Insurances on Lives and Granting Annuities, Appellant.*

212 And, now, on this 1st day of September, 1892, it is ordered, that the appeal be allowed as prayed for.

September 1st, 1892.

DON A. PARDEE,
*Circuit Judge.*

[Endorsed:] Circuit court for fifth circuit of United States, northern district of Florida. The Pennsylvania Co. for Insurances on Lives and Granting Annuities *vs.* The Jacksonville, Tampa and Key West Railway Co. Entry of appeal and order allowing appeal. Filed August 23, 1892. Philip Walter, clerk, by Jno. S. Driggs, dep. clerk.

213 Circuit Court for Fifth Judicial Circuit of the United States.
Northern District of Florida.

THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND FOR GRANTING ANNUITIES, Complainant,
*vs.*
JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY, Defendant.

Know all men by these presents, that we, Jonathan C. Greeley and Walter B. Clarkson, are held and firmly bound unto the Jacksonville, Tampa and Key West Railway Company and the American Construction Company in the sum of five hundred dollars ($500) for the payment whereof, well and truly to be made, we bind ourselves, our administrators, executors and assigns, jointly and severally by these presents.

Witness our hands and seals this —— day of August, A. D. 1892.

The condition of the above obligation is such that whereas The Pennsylvania Company for Insurances on Lives and for Granting Annuities is about to enter and prosecute an appeal to the circuit court of appeals for the fifth judicial circuit of the United States from the decree rendered on the 4th day of August, A. D. 1892, by the circuit court for the fifth judicial circuit of the United States, in and for the northern district of Florida, wherein the said The
214 Pennsylvania Company for Insurances of Lives and for Granting Annuities is complainant, and the aforesaid Jacksonville, Tampa and Key West Railway Company is defendant. Now, if the said The Pennsylvania Company for Insurances on Lives and for Granting Annuities shall enter and prosecute said appeal with effect, and shall pay all costs in case the said decree shall be affirmed, then this obligation to be null and void, otherwise to remain in full force and virtue.

JONATHAN C. GREELEY, [MY SEAL.]
WALTER B. CLARKSON. [MY SEAL.]

Be it remembered that on this 23d day of August, A. D. 1892, in the county of Duval and State of Florida, personally came before me Jonathan C. Greeley, who made oath before me that he is a resident of Duval county, Florida; that he executed the above bond for the purposes therein expressed, and that he is worth the sum of two thousand dollars over and above all debts and liabilities.

JONATHAN C. GREELEY.

Subscribed and sworn to before me this the 23d day of August, A. D. 1892.

[SEAL.] JOHN F. ROLLINS,
*Notary Public.*

Bond accepted.

DON A. PARDEE,
*Circuit Judge.*

Be it remembered that on this 23d day of August, A. D. 1892, in the county of Duval and State of Florida, personally came before me Walter B. Clarkson, who made oath before me that he is a resident of Duval county, Florida; that he executed the above
215 bond for the purposes therein expressed, and that he is worth the sum of two thousand dollars over and above all debts and liabilities.

WALTER B. CLARKSON.

Subscribed and sworn to before me this 23d day of August, A. D. 1892.

R. H. LIGGETT,
*Notary Public for State of Florida at Large.*

This is to certify that Jonathan C. Greeley and Walter B. Clarkson, the obligors in the above bond, are amply responsible for the amount of said bond.

PHILIP WALTER, *Clerk.*
[SEAL.] By JNO. S. DRIGGS, *Dep. Clerk.*

[Endorsed:] Circuit court, northern district of Fla. The Pennsylvania Company for Insurances on Lives and for Granting Annuities *vs.* Jacksonville, Tampa and Key West Railway Company. Appeal bond. Filed September 6th, 1892. Philip Walter, clerk, by Jno. S. Driggs, dep. clerk.

216 Circuit Court for Fifth Judicial Circuit of United States, Northern District of Florida.

THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND GRANTING ANNUITIES, Complainant,
*vs.*
THE JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY, Defendant.

Now, on this — day of August, A. D. 1892, comes the complainant The Pennsylvania Company for Insurances on Lives and Granting Annuities, by R. H. Liggett, its counsel, and says that in the record and proceedings in the above-entitled cause there is manifest error in this, to wit:

1.

That the circuit court erred in rendering and entering the decree or order of August 4th, 1892, whereby it stayed any further pro-

ceedings in the above-entitled cause till the further order of that court.

Wherefore, the said Pennsylvania Company for Insurances on Lives and for Granting Annuities prays that the said decree or order entered and rendered by the circuit court of the fifth
217 judicial court of United States in and for the northern district of Florida may be vacated, and such decree entered in lieu thereof as may be consonant with the principles of law and equity.

R. H. LIGGETT,
*Of Counsel for the Pennsylvania Company for Insurances on Lives and Granting Annuities.*

[Endorsed:] Circuit court, fifth circuit of United States, northern district of Florida. The Pennsylvania Co. for Insurances on Lives and Granting Annuities *v.* The Jacksonville, Tampa and Key West Railway Co. Assignment of errors. Filed August 23, 1892. Philip Walter, clerk, by Jno. S. Driggs, dep. clerk.

218 In United States Circuit Court, Fifth Circuit, Northern District of Florida.

PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND FOR GRANTING ANNUITIES
*vs.*
JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY.

I, Philip Walter, clerk of United States circuit court, fifth circuit, northern district of Florida, do hereby certify that the foregoing is a true, full and complete transcript of all the papers, orders and decrees in the above-entitled cause of The Pennsylvania Company for Insurances on Lives and for Granting Annuities *vs.* The Jacksonville, Tampa and Key West Railway Company from the files and records of my office, and also a full and complete transcript of all the papers, orders and decrees in the case of The American Construction Company *vs.* Jacksonville, Tampa and Key West Railway Company from the files and records of my office which have been filed and entered in said cause prior to August 5th, 1892.

Witness my hand and official seal at the city of Jacksonville, Fla., in the district and circuit aforesaid, this the 15th day of
[SEAL.] September, A. D. 1892, and of our Independence the 117th year.

PHILIP WALTER, *Clerk*,
By JNO. S. DRIGGS,
*Deputy Clerk.*

Endorsed: Filed Sept. 26, 1892. J. M. McKee, clerk.

219 And afterwards, to wit, on the 18th day of November, a motion was filed to dismiss the appeal herein.

(NOTE).—(The above motion has been lost from the record and cannot be found. The grounds of the motion are set forth in the opinion of the court.)

*Hearing and Continuance of Cause.*

Extract from the Minutes, November Term, 1892.

Nov. 23, 1892.

PENNSYLVANIA COMPANY FOR THE INSURANCE ON LIVES & GRANTING ANNUITIES
*v.*
JACKSONVILLE, TAMPA & KEY WEST RAILWAY COMPANY *et al.* } No. 78.

This cause came on to be heard this day and was argued by Mr. Geo. F. Baer for appellant, and further argument postponed until to-morrow.

*Hearing & Submission of Cause with Motion to Dismiss.*

220 Extract from the Minutes, November Term, 1892.

Nov. 24, 1892.

PENNSYLVANIA COMPANY FOR THE INSURANCE ON LIVES AND GRANTING ANNUITIES
*v.*
JACKSONVILLE, TAMPA & KEY WEST RAILWAY COMPANY *et al.* } No. 78.

Argument in this cause concluded by Mr. E. B. Kruttschnitt and Mr. John W. Simpson for appellant, and Mr. H. Bisbee for appellee, and the cause submitted to the consideration of the court with motion to dismiss.

*Final Decree.*

Extract from the Minutes, November Term, 1892.

MONDAY, *Jan'y* 16, 1893.

Court met pursuant to adjournment.

Present and presiding: The Honorable Don A. Pardee, United States circuit judge for the fifth circuit.

Present, also: The Honorable A. P. McCormick, United States circuit judge for the fifth circuit, and the Honorable James W.
221 Locke, United States district judge for the southern district of Florida.

THE PENNSYLVANIA COMPANY FOR INSURANCE ON LIVES AND GRANTING ANNUITIES
*v.*
THE JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY AND THE AMERICAN CONSTRUCTION COMPANY. } No. 78.

This cause came on to be heard on the motion of the appellees to dismiss the appeal herein, and on the transcript of the record from the circuit court of the United States for the northern district of Florida, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that said motion be, and the same is hereby, overruled, and that the decree appealed from be, and the same is hereby, reversed, the stay of proceedings dissolved, the receivership restored, and this cause remanded to said circuit court, with instructions to proceed in this cause in accordance with the opinion rendered herein.

222 It is further ordered, adjudged, and decreed that the appellee herein, The American Construction Company, be condemned to pay all the costs of this appeal, for which execution may be issued out of said circuit court.

223 United States Circuit Court of Appeals, Fifth Circuit, November Term, 1892.

THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND FOR GRANTING ANNUITIES, Appellant,
*vs.*
THE JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY *et al.*, Appellees. } No. 78.

Appeal from the United States circuit court for the northern district of Florida.

Before Pardee and McCormick, circuit judges, and Locke, district judge.

McCormick, circuit judge, delivered the opinion of the court.

The appellee, The American Construction Company, moves to dismiss this appeal on the following grounds:

1. Because there is no properly authenticated transcript of the record filed in this court as required by the rules thereof.

2. Because this court has no jurisdiction to entertain the appeal from the order appealed from.

3. Because it appears from the papers and pleadings on file in this court that the suit is a collusive one between the appellant and the defendant railway company.

224 The language of the authentication in this case is "that the foregoing is a true, full, and complete transcript of all the papers, orders and decrees * * * from the files and records of my office." Section 997 of the Revised Statutes of the United States

requires "an authenticated transcript of the record;" rule 8 of the Supreme Court directs "a true copy of the record and of all the proceedings in the cause" to be transmitted, and our rule 14 requires "a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in the case." There is in this case no suggestion of a diminution of the record, and an examination of the record discovers on its face no indication that it is incomplete. All the papers, orders and decrees filed and entered in the clerk's office in the given case would seem to embrace the whole record. It is true that papers may be filed that are not so marked, and may be so marked, though not properly a part of the files.

The objection here, though general in its terms, cannot be that the clerk has sent up too much, and it is difficult to conceive what he can have omitted when he has sent us "a true, full, and complete transcript of all the papers, orders and decrees" in the given case. It may be well to impress on clerks of the trial courts that in the absence of a controlling stipulation by the parties, or written instructions from the plaintiff in error or appellant filed in the case, transcripts in cases of appeal or writs of error should meet the requirements of our rule 14, and their certificates of authentication follow the language of our rule, and show that the transcript transmitted is "a true copy of the record, bill of exceptions, assignment of errors and all proceedings in the case."

On the 23d July, 1892, the appellant, The Pennsylvania Company for Insurances on Lives and for Granting Annuities, exhibited its bill of complaint to the circuit court for the northern district of Florida, showing that it was the trustee in a consolidated mortgage made by the Jacksonville, Tampa and Key West Railway Company, a corporation created and existing under the laws of Florida, on about two hundred miles of road, with its equipment and other property described in the mortgage, to secure an issue of four
225 thousand bonds of the denomination of one thousand dollars each. Said railway company was the sole defendant in the bill. It was shown to be a consolidation of three other constituent corporations, each of which had constructed and owned a portion of its railroad and other property, and had placed a first mortgage on its respective portions, which was still outstanding and binding, and all aggregating two million two hundred and sixteen thousand dollars. That four thousand of consolidated bonds were issued under the said consolidated mortgage, and that two thousand two hundred and sixteen of said four thousand were retained by said trustee to retire said first-mortgage bonds. That the interest on these two thousand two hundred and sixteen bonds had been duly paid, and the interest on the first-mortgage bonds of the constituent companies duly protected. That the remaining seventeen hundred and eighty-four of the said consolidated bonds had been issued and sold in part and hypothecated in part to pay and secure the floating indebtedness of the defendant railway; that on a large number of these, three instalments of interest had matured and payment had been demanded at the proper office and payment refused; that by the terms of said mortgage, such continued refusal to pay interest

put said railway in default, and authorized said trustee to proceed to foreclose said mortgage; that a number of the holders of said bonds and interest coupons had in writing requested said trustee to ask a foreclosure of said mortgage. That besides the consolidated bonds aforesaid and the said bonds of the constituent companies, the defendant railway company had outstanding certain bonds known as its collateral trust bonds, aggregating three million six hundred and seventy-three thousand dollars, which are inadequately secured by the pledge or deposit of certain bonds and stock of the Florida Southern Company; that an instalment of interest on these collateral trust bonds amounting to seventy-three thousand four hundred and sixty dollars will become payable August 1, 1892, which the defendant railway company is unable to pay, and on which it must make default; that by the terms of the pledge agreement securing said collateral trust bonds, the trustee thereunder will become entitled to declare the whole principal sum of said bonds due
226 and payable, and to foreclose the lien of said pledge, and to enter judgment against the said defendant railway company for any deficiency that may remain unpaid upon the said bonds; that the floating indebtedness amounts to more than one million eight hundred thousand dollars, of which between three hundred thousand and four hundred thousand dollars is unsecured, and the remainder is secured by the pledge as collateral of certain of said consolidated mortgage bonds, of which indebtedness a large part is now due, and another large part is due and payable upon demand; that interest upon a large part of said indebtedness is long past due, and that the defendant railway company cannot pay either said interest or the said overdue principal; that the property covered by said mortgage to complainant is inadequate security for the bonds issued thereunder; that said defendant railway company is insolvent; that to protect the rights of complainant and of said bondholders and other creditors, and to preserve and keep together the property of the defendant railway company, so that its duty to the public as a common carrier may be duly performed, a receiver ought to be forthwith appointed of all the property, rights and franchises covered by said consolidated mortgage. The prayer is for foreclosure subject to the prior liens, for a receiver, and for general relief.

This bill, and affidavit of Charles C. Deming, vice-president of the defendant company, supporting its allegations, and the consent of the defendant company to its being exhibited, and admission of the truth of the allegations of the bill expressed by its solicitor, A. H. Joline, Esq., there personally present, being exhibited to one of the judges of said circuit court on the said 23d day of July, 1892, a preliminary decree was passed granting the receivership as prayed for, and the parties uniting in the request that "if the said application be granted, Robert B. Cable, Esq., be named as such receiver;" said Cable was appointed, with the reservation that the said appointment of Robert B. Cable, Esq., as receiver is provisional to the extent that any person or party having an interest in the property of the defendant railroad company may show cause within thirty days

from the date of said order why the said appointment should not be confirmed.

227 The appointment was also made so far provisional as not to affect or forestall any action the court, or any of its judges may hereafter see proper to take on any bill theretofore filed in said court against said railroad company wherein prayer had also been made for a receivership.

On July 27, 1892, said receiver, Robert B. Cable, took the oath as such receiver. On July 28, 1892, the appellee, the American Construction Company, presented its petition of intervention in this case to another of the judges of said circuit court, showing that it had on July 6, 1892, exhibited its bill in said court against the defendant railway company and other parties, with exhibits and affidavits, to which it prayed reference as often and fully as necessary, in which bill it had asked for a receivership, injunction and appropriate ultimate relief, that a temporary restraining order had been granted as prayed for by said intervenor in its said bill, and the defendant company was ordered to show cause on or before the 11th day of said month why the receivership as prayed for by it should not be granted; that on the said 11th day of July, 1892, the said railway company moved the court for further time to prepare to show cause why a receiver should not be appointed, representing that it could show good cause; that on such representation the time was extended to the 28th day of July, 1892; that afterward, to wit, on the 23d day of said month, the defendant railway company, by collusion with the complainant herein, imposed on the judge making said order appointing said Cable receiver; that said Cable is the manager and appointee of the directors of said company against whom intervenor in its bill had made charges of gross fraud, mismanagement and diversion of the funds of said company; that said directors are the owners of the floating debt of said company, and are the very persons (if any have applied) who have applied to complainant to bring this suit; that it fully appears from the pleadings and proceedings that the said railway company and its directors control both the defendant and complainant in this suit, and intervenor prays that the order appointing a receiver in this case be set aside and vacated, and that all proceedings in this case be stayed until the further order of said circuit court.

228 And thereupon the order from which this appeal was taken was made on the 4th day of August, 1892, and is in these words:

"This cause came on to be heard on the 28th day of July, 1892, on the motion of the American Construction Company, which had intervened therein, and which is also complainant in another suit in equity against the said defendant and others, in the bill filed on the 6th day of July, 1892, praying for the appointment of a receiver.

"The said motion and petition of intervention of the said American Construction Company prayed for an order vacating the order entered in the above-entitled cause on the 23d day of the month of July aforesaid, appointing Robert B. Cable, Esq., receiver, and staying all further proceedings in said cause.

"On consideration thereof, and of the said several bills in equity and the affidavits and exhibits in support thereof, it is ordered, adjudged, and decreed that the aforesaid order appointing Robert B. Cable receiver of the properties of the Jacksonville, Tampa & Key West Railway Company be, and the same is hereby set aside and vacated, and all further proceedings in the above-entitled cause stayed until the further order of this court."

The proceedings in the appellee's suit, referred to in its petition of intervention, are made part of the record on this appeal, and a careful examination of those proceedings, and of the proceedings in this suit, has satisfied us that the third ground on which we are asked to dismiss this appeal is not well taken. Such examination has not only not suggested to our minds that this is a collusive suit, but, on the contrary, it clearly appears to us that no deception was practised on the court in procuring the order made July 23, 1892; the terms of that order show that the judge making it had actual knowledge that such proceedings were pending, and providently guarded against any embarrassment likely to arise from two judges of the court acting separately on separate cases involving more or less the same subject. And if the allegations of the appellant's bill are true within the knowledge of the vice-president of the defendant railway company, his making an affidavit to the facts and the defendant's admissions of the truth of the allegations should
229 provoke no unfavorable criticism from a court of equity; and the litigation shown to have been instituted by a very small minority of stockholders against the owners of the great majority of the stock and the pressure for a receiver in that case made it highly proper, if not absolutely necessary, that the appellant should institute and control the litigation which should withdraw from the control of the company the most productive part of its property and that on which the consolidated mortgage rested, and the defendant company and its directors and officers individually being seriously threatened with being disabled by the hostile attitude of the minority stockholders from meeting the obligations of the company as assumed in the consolidated mortgage, might very well, in good faith and to their credit, furnish to the complainant information and evidence of the true state of affairs. The appellee, The American Construction Company, contends that this court has no jurisdiction to entertain this appeal, urging that the order from which the appeal is taken is an interlocutory order not granting or continuing an injunction. The appellant insists that it is clearly an order granting an injunction, and hence within the seventh section of the act of March 3, 1891, authorizing such appeals; and contends, further, that it is so decisive of the only issue made by the appellee as to bring it within the true construction of the statutes authorizing appeals from final decrees.

The intervenor's specific prayers were that the order appointing a receiver be set aside and vacated, and that all proceedings in the cause be stayed until the further order of this court, both of which were granted by the order from which the appeal is taken. The manifest effect of that order was, so far as this suit is concerned, to

restore the property to the custody of the defendant company and suffer the earnings on which complainant held a lien to continue to run to waste by being diverted into other channels. If we may consider in connection herewith the probable or actual action of the court in the other case affecting this property, it does not, in our view, materially change the situation. We are, however, relieved of the duty of determining whether the order in question is a final decree
230 in the sense that would authorize an appeal from it as such by the construction we place on that part of the order granting a stay of all further proceedings in the case. Our views as to what decrees in equity should be considered final decrees within the meaning of the statutes giving appeals from final decrees have been quite fully expressed in Grant Brothers *vs.* The East and West Railway of Alabama, 50 Fed. Rep. 795, and in Dufour *et al. vs.* Carl Lang, not yet reported. In our opinion, to order, at the prayer of one party, that all further proceedings in the cause shall be stayed until the further order of the court is to grant an injunction within the meaning of the seventh section of the act of March 3, 1891. It follows that the appellee's motion to dismiss this appeal must be denied.

The appellant assigns as error:

I.

"That the circuit court erred in rendering and entering the decree or order of August 4, 1892, whereby it stayed any further proceedings in the above-entitled cause till the further order of that court.

"Wherefore the said Pennsylvania Company for Insurances on Lives and for Granting Annuities prays that the said decree or order entered and rendered by the circuit court of the fifth judicial circuit of the United States in and for the northern district of Florida may be vacated, and such decree entered in lieu thereof as may be consonant with the principles of law and equity."

The order staying proceedings in this case carried with it necessarily the other branch of the order vacating the receivership. It is urged on behalf of appellant that the consolidated mortgage covered the income of the property and expressly provided that appellant should be entitled to have a receiver appointed if it became necessary to resort to the courts to enforce the obligations of the defendant railway company. The appellee contends that though such is the contract between the parties, the matter rests in the sound discretion of the chancellor. And this contention is supported by the cases cited on the brief of appellee's counsel.

4th Bissell's Rep. 35.
1st Bissell's Rep. 198.
8th Bissell's Rep. 247.
4th Dillon, 114.

231 The appellee contends further that after its bill was filed, a restraining order granted, and an order to show cause why a receiver should not be appointed at its suit, the property of the de-

fendant company was drawn within the jurisdiction of the court in that case, and the court having thus acquired jurisdiction of the cause and subject-matter, the appellee, as complainant in that suit had the right to prosecute its suit, and to obtain the relief asked, if it established its case, in that suit, and could not be forced into another suit even in the same court. In our opinion this contention is not supported by the cases cited. The doctrine is familiar that between courts having concurrent jurisdiction of parties and subject-matter the court which first takes jurisdiction holds it to the exclusion of the others, and the cases cited illustrate this doctrine, but do not hold or, by analogy, lend support to this contention of appellee. As attempted to be applied to this case we are of the opinion that this contention can find no support from reason or from authority. The appellant is trustee in the consolidated mortgage covering two hundred miles of the most productive part of the defendant railway's railroad; said railway company is shown to be claiming to own and is operating nearly twice as much other railroad in an embarrassed condition, and to be running two other shorter lines of transportation which the intervenor in its suit charges are operated to a loss during a large part of the year, and the burden borne by the defendant railway company; the bonds secured by this mortgage aggregate $20,000 to the mile on said two hundred miles, greater, in all reasonable probability, than the value at foreclosure sale of all the property covered by the mortgage. The appellee is only interested as a stockholder, and claims to own about one-eighteenth of the stock, while the stockholders charged by it with fraudulently controlling the directors own more than sixteen-eighteenths of the stock, and all of this being stock in a property bonded to or beyond its full present value. Can such a minority stockholder in such a property so precipitate a litigation with the other stockholders as to require that the bondholders, whose interest is not being paid, shall be stayed in their proceedings to enforce their lien until this fight between the stockholders is fought out?
232 Or must the bondholders in such a case be required, if they proceed at all, to become intervenors in the stockholders' battle? The process is extraordinary, its use must rest in sound judicial discretion.

It seems clear to us that in this case the appellant was and is entitled to have this property taken possession of by the court through the appointment of a receiver, to have it preserved, and its earnings audited, reported and applied according to the rights of the parties under the mortgage, as the same shall be settled during the progress, and at the termination of the suit by the proper decrees of the court. We are of opinion that the order granting the stay of proceedings should be reversed, the stay dissolved, and the receivership granted July 23, 1892, at the suit of the appellant, be restored, and the orders in reference to said receivership be had in this case, and reports of the operation, earnings and expenses of the property covered by said consolidated mortgage be made to the court in this case.

It is left with the circuit court to determine what person is the

proper one to execute the office of receiver in this case, and to co
tinue Receiver Cable, or to appoint a more suitable person in h
place, as the relations of the parties and the character and cond
tion of the property may, in the judgment of that court, require.

It is therefore ordered that the motion to dismiss the appeal b
overruled; that the decree appealed from be reversed; the stay
proceedings dissolved; the receivership restored, and the circu
court directed to proceed in this case in accordance with the view
expressed in the foregoing opinion; and that the appellee, Th
American Construction Company, pay all the costs of this appeal.

Endorsed: Filed Jan'y 16, 1893. J. M. McKee, clerk.

233 United States Circuit Court of Appeals for the Fifth Circui

I, James M. McKee, clerk of the United States circuit court o
appeals for the fifth circuit, do hereby certify that the foregoing 23
pages, numbered from *a* to 233, inclusive, contain a true copy of th
entire record, together with the opinion of the court, in the case o
The Pennsylvania Company for Insurances on Lives and Grantin
Annuities, appellants, *vs.* The Jacksonville, Tampa and Key Wes
Railway Company and The American Construction Company, ap
pellees, No. 78, November term, 1892, as the same remains upon th
files and records of said United States circuit court of appeals.

In testimony whereof I hereunto subscribe my name and affix th
seal of said United States circuit court of appeals, at the city of New
Orleans, this 21st day of January, A. D. 1893.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

JAMES M. McKEE,
*Clerk of the United States Circuit Court*
*of Appeals for the Fifth Circuit.*

UNITED STATES CIRCUIT COURT OF APPEALS,

FIFTH CIRCUIT.

NOVEMBER TERM, 1892.

No. 78.

THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND GRANTING ANNUITIES, Appellant,
*versus*
THE JACKSONVILLE, TAMPA & KEY WEST RAILWAY COMPANY and THE AMERICAN CONSTRUCTION COMPANY, Appellees.

*Petition for Rehearing.*

To the honorable the judges of the United States circuit court of appeals, fifth judicial circuit:

Now comes the petitioner, The American Construction Company, appellee in the above-entitled cause, and respectfully exhibits this its petition to this honorable court for a rehearing upon the following grounds:

First. Your petitioner humbly submits that this honorable court erred in taking jurisdiction of the appeal and reviewing the order appealed from for the reason that under the Constitution and laws of the United States this court has not been vested with power to review the said order, which was one purely in the discretion of the court below, the said order being granted to accomplish a temporary purpose to enable your petitioner to prepare and file proper pleadings to defend the said suit on the ground that the railway company was unfaithful to its trust and could not be relied upon to properly defend such suit, and your petitioner humbly submits that the court below should always be permitted to exercise a large discretion in cases of this character.

Second. Your petitioner humbly submits that this honorable court erred in recognizing the validity of the order of July 23, 1892, made by one of the circuit judges of this circuit while in the State of Ohio and while the circuit court of the United States for the northern district of Florida was in session, where the said suit was pending, and humbly submits that a circuit judge has no power to make an order appointing a receiver outside of the circuit in which the suit is pending at any time, and especially when the court is in session wherein the suit is pending or brought, and that such order is a nullity.

Searles *vs.* R. R. Co., Sec. Wood's Rep., 621.
Goodyear Dental Co. *vs.* Fulsom, Third Fed. Rep., 509.

Your petitioner humbly submits that there is but one session in a term of court, though many adjournments.

22 Fed. Rep., 536.

Third. The order of July 23, 1892, aforesaid being treated as a nullity, there was no receivership to be restored, as ordered by th decree of this honorable court, and your petitioner humbly submit to this honorable court that it has no jurisdiction or power to orde the court below to appoint a receiver or to control the court belo in the exercise of its discretion in appointing or refusing to appoin a receiver, and humbly submits that the opinion of this court an its order in this respect should be stricken out or modified, and fo the further reason that, if it may appear to this court that a prope case is made from the pleadings for the appointment of a receiver it has no power or jurisdiction to grant a decree or give a remedy that is vested exclusively in the court below.

Fourth. Your petitioner humbly submits that if the said order o July 23, 1892, is deemed and considered as a valid order, then the circuit judge who made it, as hereinbefore stated, could not sit i this honorable court at the hearing of the said cause and is ex pressly prohibited from so doing by the third section of the ac creating this court in the following language:

"Provided that no justice or judge before whom a cause or ques tion may have been tried or heard in the district court or existing circuit court shall sit on the trial or hearing of such cause or ques tion in the circuit court of appeals;" and your petitioner humbly submits this question to this honorable court for its consideration and decision.

Fifth. Your petitioner humbly showeth that in and by its said bill and affidavits, made a part of the record in this cause, it is charged and alleged and *prima facie* proven that the holders of the consolidated mortgage bonds who, if anybody, applied to the com plainant to have a receiver appointed of the property of the said company are not *bona fide* holders of such bonds, either as owners o as collateral security for obligations of the said railway company and that such obligations are invalid, and also charge that the above-entitled suit is collusive, and your petitioner humbly submits that it was error in this honorable court to so frame its opinion and order as to preclude the court below from taking proper proceedings either by reference to a master or otherwise, to determine whether or not the said suit was collusive before hearing or entertaining a motion for the appointment of a receiver therein, and your peti tioner humbly submits that the opinion of this honorable court upon this branch of the case is so framed that it rests in doubt whether or not it would be respectful to this honorable court for the court below to proceed as herein stated and determine the question of the collusiveness of the said suit before the application for a re ceiver is heard, and has left in doubt whether or not this honorable court intends its opinion and decree as a peremptory order to the court below to appoint a receiver and to control the discretion of the circuit court in this respect, and your petitioner humbly submits that the opinion and decree of this honorable court should be set aside in this respect or that they should be modified so as not to preclude the court below from its power and authority to refuse to appoint a receiver in case the said suit is collusive and so as not to preclude

the said court from dismissing the bill of the appellant in the said cause at any time during the progress thereof, when it shall become satisfied that the holders of the bonds, who have applied through their trustee for a receiver, are not *bona fide* holders, and that the *bona fide* holders of the said bonds are opposed to the appointment of a receiver and to the foreclosure of the mortgage in question.

Therefore your petitioner humbly prays that the order of this honorable court be set aside or that the same be modified as hereinbefore indicated or that such other order may be made as to this honorable court may seem meet and the circumstances of the case require.

And your petitioner will ever pray, etc.

H. BISBEE.

Having examined the foregoing petition and the matters therein contained, I respectfully certify that, in my opinion, this is a proper cause to be reheard before this honorable court, if this honorable court shall think fit.

H. BISBEE,
*A Solicitor.*

Jan'y 24, '93.

(Endorsed:) Filed January 23, 1893. J. M. McKee, clerk.

United States Circuit Court of Appeals for the Fifth Circuit, November Term, 1892.

*Extract from Minutes.*

MONDAY, *January* 30, 1893.

Court met pursuant to adjournment.

Present and presiding, the Honorable Don A. Pardee, United States circuit judge for the fifth judicial circuit; present also, the Honorable A. P. McCormick, United States circuit judge for the fifth judicial circuit, and the Honorable James W. Locke, United States district judge for the southern district of Florida.

THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND FOR GRANTING ANNUITIES
*v.*
THE JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY and THE AMERICAN CONSTRUCTION COMPANY.

The petition of the appellee for a rehearing filed in this cause having now been sufficiently considered by the court—

It is ordered that said petition be, and the same is hereby, denied, and that the mandate in this cause issue upon application of the appellant.